

*The Central Provinces Civil Courts Bill, 1885.—Sections 18-24.*

by Civil Courts subordinate to the Court of the Judicial Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Judicial Commissioner.

[Act XIV of 1865, section 15, and Act XVIII of 1884, section 48.]

18. (1) The period of limitation for an appeal to the Court of the Commissioners shall be sixty days.

(2) In the computation of that period and in all other respects the limitation of appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

*Rules.*

[Act XVIII of 1884, section 14.]

19. (1) The Judicial Commissioner may make rules consistent with this Act and any other enactment for the time being in force—

- (a) declaring what persons shall be permitted to practise as petition-writers in Civil Courts, and regulating the conduct of persons so practising;
- (b) prescribing forms for seals to be used by those Courts;
- (c) regulating the procedure in cases where any person is entitled to inspect a record of any Civil Court or obtain a copy of the same, and prescribing the fees payable by such persons for searches and copies;
- (d) conferring and imposing on the ministerial officers of Civil Courts such powers and duties of a non-judicial or quasi-judicial nature as he thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;
- (e) prescribing forms for such books, entries, statistics and accounts as he thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;
- (f) providing for the inspection of those Courts, and the supervision of the working thereof; and
- (g) regulating all such matters as he may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of those Courts and maintaining proper discipline among those officers.

(2) A rule made under this section shall not take effect until it has been sanctioned by the Chief Commissioner and published in the official Gazette.

(3) Whoever breaks any rule made under clause (a) shall be punished with fine which may extend to fifty rupees.

[New, cf. Act XVIII of 1884, section 37, and Act VI of 1871, section 38.]

(4) Rules made under clause (g) may provide, among other matters, for fines, to an amount not exceeding one month's salary, being imposed on ministerial officers for misconduct or neglect in the performance of their duties, and for the recovery of fines so imposed by deduction of the amount thereof from any salary that may be or become due to the officers fined.

*Supplemental Provisions.*

20. (1) The Judicial Commissioner shall keep such registers, books and accounts as may be necessary for the transaction of the business of his Court, and shall submit to the Chief Commissioner such of those registers, books and accounts, and such statements of the work done in his Court, as may be required by the Chief Commissioner.

(2) The Judicial Commissioner shall also comply, in such form and manner as the Chief Commissioner may deem proper, with such requisitions as may be made by the Chief Commissioner for records of, or papers belonging to, the Court of the Judicial Commissioner or any Civil Court subordinate thereto, or for certified copies of, or extracts from, such records or papers, or for returns, statements or reports.

21. (1) The Chief Commissioner may, by order in writing, fix the place or places at which any Civil Court shall be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Civil Court may be held at any place within the local limits of its jurisdiction.

22. The Chief Commissioner may, when he is empowered by this Act to confer any powers, confer them on any person specially by name or by virtue of his office.

23. (1) Subject to the approval of the Chief Commissioner, the Judicial Commissioner shall prepare a list of days to be observed in each year as holidays in his Court and the Civil Courts subordinate thereto.

(2) The list shall be published in the official Gazette.

24. (1) All cases or proceedings pending in the Court of the Judicial Commissioner on the day when this Act comes into force shall be disposed of as if this Act had not been passed.

(2) All cases or proceedings pending in any Civil Court subordinate to the Court of the Judicial Commissioner on that day shall be disposed of as if this Act had not been passed.

Provided that the Judicial Commissioner may direct that any such cases or proceedings shall be transferred for disposal to any Court established under this Act which would have had jurisdiction if it had been in existence when the cases or proceedings were instituted.

(3) In the case of an appeal pending on the said day, the following shall, for the purposes of sub-section (2), be deemed to be the Court which

*The Central Provinces Civil Courts Bill, 1885—Sections 25-27.*

would have had jurisdiction as aforesaid, namely:—

- (a) when the value of the suit does not exceed one thousand rupees and the decree or order has been passed by a Court of a class lower than that of the Deputy Commissioner—the Court of the Deputy Commissioner;
- (b) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

(a) when the appeal would before the said date have lain to the Court of the Judicial Commissioner—that Court;

(b) when the appeal is from a decree or order passed by a Court of a class lower than that of the Deputy Commissioner in an original civil suit of which the value does not exceed one thousand rupees—the Court of the Deputy Commissioner;

(c) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

Act XVIII of 1884, section 65.

25. Appeals from decrees and orders passed by Civil Courts and not appealed against before the date on which this Act comes into force shall lie and be disposed of as if this Act had not been passed and not otherwise:

Provided that the Courts to which such appeals shall lie shall be as follows:—

26. All powers conferred by this Act may be exercised from time to time as occasion requires. [Act XVIII of 1884, section 65.]

27. All orders required by this Act to be issued by the Chief Commissioner in writing shall be published in the official Gazette.

## STATEMENT OF OBJECTS AND REASONS.

THE principal object of this Bill is to enable the Chief Commissioner of the Central Provinces to relieve some of the Commissioners, Deputy Commissioners and Tahsildars of the civil business with which they are now so over-burdened as to have insufficient time to devote to their executive duties. At present, a Commissioner has power to try original civil suits withdrawn from Courts subordinate to him, and is required to hear all appeals from decrees and orders passed in original civil suits by Assistant Commissioners of the first class and by Deputy Commissioners. It is proposed to relieve Commissioners by making appeals from decrees and orders passed by Assistant Commissioners of the first class in original civil suits of value not exceeding one thousand rupees lie to the Deputy Commissioner, and by empowering the Chief Commissioner to invest persons, under the name of Judicial Assistants to Commissioners, with all or any of the powers of the Court of a Commissioner.

A Deputy Commissioner may, like a Commissioner, try original civil suits withdrawn from Courts subordinate to him, and is required to try all original civil suits of value exceeding one thousand rupees if there is no Assistant Commissioner of higher class than the second in the district, and exceeding five thousand rupees if there is in the district an Assistant Commissioner of the first class, and to hear appeals from decrees and orders of Naib-tahsildars, Tahsildars and Assistant Commissioners of the first and second classes. It is proposed to relieve Deputy Commissioners by empowering the Chief Commissioner to invest persons, under the name of Civil Judges, with all or any of the powers of the Court of a Deputy Commissioner.

Similarly, Tahsildars are to be relieved by the appointment of Munsifs, who may be invested with all or any of their powers.

Judicial Assistants to Commissioners, Civil Judges and Munsifs will only be appointed when, and for so long as, their services are absolutely needed, and nothing like a uniform or final arrangement is to be attempted throughout the whole of the Provinces, the circumstances of which vary not only from district to district, but from tahsil to tahsil.

This scheme, which was proposed by Mr. Crosthwaite, the Chief Commissioner, has been approved by the Government of India. It proceeds on the principle that all suits should be tried and appeals heard in the lowest Court of competent jurisdiction, and it paves the way to the gradual removal of civil judicial business from the magisterial and executive authorities as the need for the removal arises.

As, in order to give effect to the scheme, it was necessary to amend the Central Provinces Courts Act, 1865, and that Act contained provisions which later legislation had rendered obsolete, and was in many respects defective, it was decided, with the concurrence of the Chief Commissioner, to consolidate the law relating to Civil Courts in the Central Provinces, and to incorporate in it not only the provisions necessary to give effect to Mr. Crosthwaite's scheme, but also certain portions of the Punjab Courts Act of last year.

This Bill has been prepared in accordance with that decision.

Those portions of the Bill which give effect to Mr. Crosthwaite's scheme for relieving Revenue-officers, where necessary, of the whole or part of their civil judicial business have already been sufficiently explained.

As to the proviso to section 10, sub-section (1), it may be remarked that certain classes of suits are at present excepted by executive order from the jurisdiction of Tahsildárs.

The other portions of the Bill which find no place in Act XIV of 1865 have for the most part been taken from Act XVIII of 1884.

C. P. ILBERT.

*The 27th July, 1885.*

D. FITZPATRICK,  
*Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 15, 1885.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 29th July, 1885, and was referred to a Select Committee:—

No. 14 of 1885.

### THE CENTRAL PROVINCES CIVIL COURTS BILL, 1885.

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###### *A Bill to amend the Law relating to Civil Courts in the Central Provinces.*

WHEREAS it is expedient to amend the law relating to Civil Courts in the Central Provinces; It is hereby enacted as follows:—

###### *Preliminary.*

1. (1) This Act may be called the Central Provinces Civil Courts Act, 1885.

(2) It extends to the territories for the time being under the administration of the Chief Commissioner of the Central Provinces; and

*The Central Provinces Civil Courts Bill, 1885.—Sections 2-10.*

(3) It shall come into force on the first day of January, 1886.

[Act XVIII of 1884, section 2, sub-section (4).]

(4) Any authority conferred on the Chief Commissioner or on the Judicial Commissioner by this Act to issue orders or make rules may be exercised at any time after the passing of this Act; but an order or rule so issued or made shall not take effect until the Act comes into force.

XIV of 1865.

2. (1) On and from the day on which this Act comes into force the Central Provinces Courts Act, 1865, and Act XXVII of 1867, so far as it relates to the Central Provinces, shall be repealed.

Repeal.

[See Act XVIII of 1884, m. 38-38.]

(2) Any enactment or document referring to either of the enactments hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof; and all declarations made, powers conferred, limits prescribed, directions given and orders issued under either of those enactments shall, so far as may be, be deemed to have been respectively made, conferred, prescribed, given and issued under this Act.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

[Act XIV of 1865, section 2.]

[Act XVIII of 1884, section 3, clause (8).]

“Assistant Commissioner” includes Extra Assistant Commissioner; and

“value,” used with reference to a suit, means the amount or value of the subject-matter of the suit.

*Classes of Courts.*

[Act XIV of 1865, section 6.]

4. Besides the Courts of Small Causes established under Act XI of 1865, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

- (a) the Court of the Judicial Commissioner;
- (b) the Court of the Commissioner;
- (c) the Court of the Deputy Commissioner;
- (d) the Court of the Assistant Commissioner of the first class;
- (e) the Court of the Assistant Commissioner of the second class;
- (f) the Court of the Assistant Commissioner of the third class;
- (g) the Court of the Tahsildár of the first class;
- (h) the Court of the Tahsildár of the second class.

*Court of the Judicial Commissioner.*

[Act XVIII of 1884, sections 5 and 6.]

5. The Judicial Commissioner shall be appointed by the Governor-General in Council; and his Court shall be deemed, for the purposes of all enactments for the time being in force, to be the highest Civil Court of appeal in the territories to which this Act extends.

*Courts of Commissioners and Deputy Commissioners.*

[Act XIV of 1865, section 6.]

6. (1) The local limits of the jurisdiction of the Court of the Commissioner and Deputy Commissioner shall be those of the division of the revenue-administration of which he is in charge.

(2) The local limits of the jurisdiction of the Court of the Deputy Commissioner shall be those of the district of the revenue-administration of which he is in charge.

7. Except as otherwise provided by any enactment for the time being in force, the Court of the Commissioner and the Court of the Deputy Commissioner shall be competent to try original civil suits without limit as regards the value.

8. Except as otherwise provided by any enactment for the time being in force, the Deputy Commissioner shall be deemed to be the District Judge of the district, and his Court to be the District Court or principal Civil Court of original jurisdiction in the district.

*Other Courts.*

9. The Chief Commissioner may, by order in writing, declare, as regards any Assistant Commissioner, that his Court shall be that of an Assistant Commissioner of the first or of the second or of the third class, and, as regards any Tahsildár, that his Court shall be that of a Tahsildár of the first or of the second class.

10. (1) Courts of Assistant Commissioners and Tahsildárs shall be competent to try original civil suits of which the value does not exceed that specified against each Court in the following table:—

Courts.	Value.
Court of the Assistant Commissioner of the first class	Five thousand rupees.
Court of the Assistant Commissioner of the second class	One thousand rupees.
Court of the Assistant Commissioner of the third class	Five hundred rupees.
Court of the Tahsildár of the first class	Three hundred rupees.
Court of the Tahsildár of the second class	One hundred rupees.

Provided that the Chief Commissioner may, by order in writing, limit the classes of original civil suits which the Courts of Tahsildárs of the first or of the second class shall be competent to try.

(2) The local limits of the jurisdiction of the Courts mentioned in this section shall be such as the Chief Commissioner may, by order in writing, define.

*The Central Provinces Civil Courts Bill, 1885.—Sections 11-17.**Nāib-tahsildār.*

**11.** The Chief Commissioner may, by order in writing, invest, within such local limits as he thinks fit, any Nāib-tahsildār with jurisdiction to try suits of the nature cognizable in a Court of Small Causes established under Act XI of 1865, up to such value, not exceeding fifty rupees, as he thinks fit.

*Judicial Assistants to Commissioners, Civil Judges and Munsifs.*

**12.** (1) The Chief Commissioner may, by order in writing, invest any person—  
Power to invest certain persons, under the names of Judicial Assistant to Commissioner, Civil Judge and Munsif, with certain powers.

- (a) with all or any of the powers of the Court of the Commissioner under this Act;
- (b) with all or any of the powers of the Court of the Deputy Commissioner under this Act; or
- (c) with all or any of the powers of the Court of a Tahsildār of the first or of the second class under this Act;

and declare that the powers with which any person is so invested shall be exercised within any specified local area, and with respect to any particular class, or particular classes, of cases, or with respect to cases generally.

(2) Persons invested with powers under subsection (1) shall be designated as follows:—

- if invested under clause (a)—Judicial Assistant to the Commissioner;
- if invested under clause (b)—Civil Judge;
- if invested under clause (c)—Munsif.

(3) The Courts of such persons shall, for all purposes connected with the exercise of the said powers, be deemed to be, respectively, Courts of Commissioners, Courts of Deputy Commissioners and Courts of Tahsildārs.

(4) The Chief Commissioner may, by order in writing, direct how business shall be distributed between the Commissioner and the Judicial Assistant to the Commissioner, and between the Deputy Commissioner and the Civil Judge.

*Small Cause Court Jurisdiction.*

**13.** The Chief Commissioner may, by order in writing, confer, within such local limits as he thinks fit, upon any Court of an Assistant Commissioner of the first or of the second class the jurisdiction of a Judge of a Court of Small Causes under Act XI of 1865 for the trial of suits cognizable by such Courts up to such value as he thinks fit, not exceeding, if the Court is that of an Assistant Commissioner of the first class, five hundred rupees, or, if the Court is that of an Assistant Commissioner of the second class, one hundred rupees.

*Administrative Control.*

**14.** (1) The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner.

(2) Subject to the general superintendence and control of the Court of the Judicial Commissioner, the control of all other Civil Courts in a division shall be vested in, and all such Courts shall be subordinate to, the Court of the Commissioner. [Act XVIII of 1884, section 33, sub-section (1).]

(3) Subject as aforesaid and to the control of Court of the Commissioner, the control of all other Civil Courts in a district shall be vested in, and all such Courts shall be subordinate to, the Court of the Deputy Commissioner: [Act XVIII of 1884, section 33, sub-section (2).]

Provided that the Chief Commissioner, by order in writing, may direct that any Judicial Assistant to the Commissioner or Civil Judge shall not be subject to the control of, or subordinate to, the Court of the Commissioner or the Court of the Deputy Commissioner, as the case may be, and may further direct that such officer shall be subject to the control of, and subordinate to, such other Court as the Chief Commissioner thinks fit. [New.]

**15.** (1) The Court of the Commissioner may exercise, as regards the Courts under its control, the same powers of withdrawal, trial and transfer as are conferred by section 25 of the Code of Civil Procedure on a District Court. [Act XVIII of 1884, section 34.]

(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of the suit, be deemed to be a Court of Small Causes.

**16.** Notwithstanding anything contained in the Code of Civil Procedure, the Court of the Commissioner and the Court of the Deputy Commissioner may, by order in writing, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit: [Act XVIII of 1884, section 35.]

Provided that no direction given under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

*Appellate Jurisdiction.*

**17.** (1) Appeals from decrees passed in original civil suits by Courts subordinate to the Court of the Deputy Commissioner shall, when such appeals are allowed by law and the value of the suit does not exceed one thousand rupees, lie to that Court. [Partly new. of Act XIV of 1865, sections 12, 13 and 14. & Act XVIII of 1884, section 36.]

(2) Appeals from decrees passed in original civil suits of value exceeding one thousand rupees by the Court of an Assistant Commissioner of the first class, or by a Civil Judge who is subordinate to the Court of the Deputy Commissioner, and from decrees passed in original civil suits of any value by the Court of a Deputy Commissioner, or by a Civil Judge who is not subordinate to that Court, or by a Judicial Assistant to the Commissioner who is subordinate to the Court of the Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Commissioner.

(3) Appeals from decrees passed in original civil suits by the Court of the Commissioner or by a Judicial Assistant to the Commissioner who is not subordinate to the Court of the Commissioner, and from appellate decrees passed

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by Civil Courts subordinate to the Court of the Judicial Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Judicial Commissioner.

[Act XIV of 1865, section 15, and Act XVIII of 1894, section 48.]

18. (1) The period of limitation for an appeal to the Court of the Commissioners shall be sixty days.

(2) In the computation of that period and in all other respects the limitation of appeals shall be governed by the provisions of the Indian XIV of 1877, Limitation Act, 1877.

*Rules.*

[Act XVIII of 1884, section 14.]

19. (1) The Judicial Commissioner may make rules consistent with this Act and any other enactment for the time being in force—

- (a) declaring what persons shall be permitted to practise as petition-writers in Civil Courts, and regulating the conduct of persons so practising;
- (b) prescribing forms for seals to be used by those Courts;
- (c) regulating the procedure in cases where any person is entitled to inspect a record of any Civil Court or obtain a copy of the same, and prescribing the fees payable by such persons for searches and copies;
- (d) conferring and imposing on the ministerial officers of Civil Courts such powers and duties of a non-judicial or quasi-judicial nature as he thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;
- (e) prescribing forms for such books, entries, statistics and accounts as he thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;
- (f) providing for the inspection of those Courts, and the supervision of the working thereof; and
- (g) regulating all such matters as he may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of those Courts and maintaining proper discipline among those officers.

(2) A rule made under this section shall not take effect until it has been sanctioned by the Chief Commissioner and published in the official Gazette.

(3) Whoever breaks any rule made under clause (a) shall be punished with fine which may extend to fifty rupees.

[New. of Act XVIII of 1884, section 37, and Act VI of 1871, section 38.]

(4) Rules made under clause (g) may provide, among other matters, for fines, to an amount not exceeding one month's salary, being imposed on ministerial officers for misconduct or neglect in the performance of their duties, and for the recovery of fines so imposed by deduction of the amount thereof from any salary that may be or become due to the officers fined.

*Supplemental Provisions.*

20. (1) The Judicial Commissioner shall keep such registers, books and accounts as may be necessary for the transaction of the business of his Court, and shall submit to the Chief Commissioner such of those registers, books and accounts, and such statements of the work done in his Court, as may be required by the Chief Commissioner.

(2) The Judicial Commissioner shall also comply, in such form and manner as the Chief Commissioner may deem proper, with such requisitions as may be made by the Chief Commissioner for records of, or papers belonging to, the Court of the Judicial Commissioner or any Civil Court subordinate thereto, or for certified copies of, or extracts from, such records or papers, or for returns, statements or reports.

21. (1) The Chief Commissioner may, by order in writing, fix the place or places at which any Civil Court shall be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Civil Court may be held at any place within the local limits of its jurisdiction.

22. The Chief Commissioner may, when he is empowered by this Act to confer any powers, confer them on any person specially by name or by virtue of his office.

23. (1) Subject to the approval of the Chief Commissioner, the Judicial Commissioner shall prepare a list of days to be observed in each year as holidays in his Court and the Civil Courts subordinate thereto.

(2) The list shall be published in the official Gazette.

24. (1) All cases or proceedings pending in the Court of the Judicial Commissioner on the day when this Act comes into force shall be disposed of as if this Act had not been passed.

(2) All cases or proceedings pending in any Civil Court subordinate to the Court of the Judicial Commissioner on that day shall be disposed of as if this Act had not been passed:

Provided that the Judicial Commissioner may direct that any such cases or proceedings shall be transferred for disposal to any Court established under this Act which would have had jurisdiction if it had been in existence when the cases or proceedings were instituted.

(3) In the case of an appeal pending on the said day, the following shall, for the purposes of sub-section (2), be deemed to be the Court which

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would have had jurisdiction as aforesaid, namely:—

- (a) when the value of the suit does not exceed one thousand rupees and the decree or order has been passed by a Court of a class lower than that of the Deputy Commissioner—the Court of the Deputy Commissioner;
- (b) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

XVIII of  
1885, section

25. Appeals from decrees and orders passed by Civil Courts and not appealed against before the date on which this Act comes into force shall lie and be disposed of as if this Act had not been passed and not otherwise:

Provided that the Courts to which such appeals shall lie shall be as follows:—

- (a) when the appeal would before the said date have lain to the Court of the Judicial Commissioner—that Court;
- (b) when the appeal is from a decree or order passed by a Court of a class lower than that of the Deputy Commissioner in an original civil suit of which the value does not exceed one thousand rupees—the Court of the Deputy Commissioner;
- (c) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

26. All powers conferred by this Act may be exercised from time to time as occasion requires. [ref. Act XVIII of 1885, section 66.]

27. All orders required by this Act to be issued by the Chief Commissioner in writing shall be published in the official Gazette.

**STATEMENT OF OBJECTS AND REASONS.**

THE principal object of this Bill is to enable the Chief Commissioner of the Central Provinces to relieve some of the Commissioners, Deputy Commissioners and Tahsildars of the civil business with which they are now so over-burdened as to have insufficient time to devote to their executive duties. At present, a Commissioner has power to try original civil suits withdrawn from Courts subordinate to him, and is required to hear all appeals from decrees and orders passed in original civil suits by Assistant Commissioners of the first class and by Deputy Commissioners. It is proposed to relieve Commissioners by making appeals from decrees and orders passed by Assistant Commissioners of the first class in original civil suits of value not exceeding one thousand rupees lie to the Deputy Commissioner, and by empowering the Chief Commissioner to invest persons, under the name of Judicial Assistants to Commissioners, with all or any of the powers of the Court of a Commissioner.

A Deputy Commissioner may, like a Commissioner, try original civil suits withdrawn from Courts subordinate to him, and is required to try all original civil suits of value exceeding one thousand rupees if there is no Assistant Commissioner of higher class than the second in the district, and exceeding five thousand rupees if there is in the district an Assistant Commissioner of the first class, and to hear appeals from decrees and orders of Naib-tahsildars, Tahsildars and Assistant Commissioners of the first and second classes. It is proposed to relieve Deputy Commissioners by empowering the Chief Commissioner to invest persons, under the name of Civil Judges, with all or any of the powers of the Court of a Deputy Commissioner.

Similarly, Tahsildars are to be relieved by the appointment of Munsifs, who may be invested with all or any of their powers.

Judicial Assistants to Commissioners, Civil Judges and Munsifs will only be appointed when, and for so long as, their services are absolutely needed, and nothing like a uniform or final arrangement is to be attempted throughout the whole of the Provinces, the circumstances of which vary not only from district to district, but from tahsil to tahsil.

This scheme, which was proposed by Mr. Crosthwaite, the Chief Commissioner, has been approved by the Government of India. It proceeds on the principle that all suits should be tried and appeals heard in the lowest Court of competent jurisdiction, and it paves the way to the gradual removal of civil judicial business from the magisterial and executive authorities as the need for the removal arises.

As, in order to give effect to the scheme, it was necessary to amend the Central Provinces Courts Act, 1865, and that Act contained provisions which later legislation had rendered obsolete, and was in many respects defective, it was decided, with the concurrence of the Chief Commissioner, to consolidate the law relating to Civil Courts in the Central Provinces, and to incorporate in it not only the provisions necessary to give effect to Mr. Crosthwaite's scheme, but also certain portions of the Panjab Courts Act of last year.

This Bill has been prepared in accordance with that decision.

Those portions of the Bill which give effect to Mr. Crosthwaite's scheme for relieving Revenue-officers, where necessary, of the whole or part of their civil judicial business have already been sufficiently explained.

As to the proviso to section 10, sub-section (1), it may be remarked that certain classes of suits are at present excepted by executive order from the jurisdiction of Tahsildárs.

The other portions of the Bill which find no place in Act XIV of 1865 have for the most part been taken from Act XVIII of 1884.

C. P. ILBERT.

*The 27th July, 1885.*

D. FITZPATRICK,  
*Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 12th August, 1885, and was referred to a Select Committee:—

No. 15 of 1885.

*A Bill to amend the Northern India Ferries Act, 1878.*

WHEREAS it is expedient to amend the Northern India Ferries Act, 1878; It is hereby enacted as follows:—

Substitution of new section for section 8, and amendment of section 15.

1. (1) For section 8 the following shall be substituted, namely:—

"8. The Magistrate of the district may, from time to time, let the tolls of any public ferry by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Local Government.

"The lessee shall conform to the rules made under this Act for the management and control of such ferry, and may be required by the Ma-

gistrate of the district to give such security for his good conduct and for the punctual payment of the rent as such Magistrate thinks fit.

"When the tolls are put up to public auction, the Magistrate of the district, or the officer conducting the auction on his behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction."

(2) In the third paragraph of section 15, for the word "auction" the word "lease" shall be substituted.

Amendment of section 13, and substitution of new section for section 26.

2. (1) For the first paragraph of section 13 the following shall be substituted, namely:—

"Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry."

(2) For section 26 the following shall be substituted, namely:—

"26. Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions."

## STATEMENT OF OBJECTS AND REASONS.

THE necessity of amending section 13 of the Northern India Ferries Act, 1878, has been brought to the notice of the Government of India by a recent judgment of the High Court for the North-Western Provinces. In the case before the Court the accused persons had established a bridge-of-boats in the immediate neighbourhood of a public ferry. A bridge-of-boats is a "ferry" within the meaning of the Act, but section 13, in its present form, does not prohibit the keeping of a "ferry", but only of a "ferry-boat", within certain limits. While, therefore, the accused would have committed an offence if they had kept a ferry-boat for the purpose of plying for hire, they had committed no offence by establishing a bridge-of-boats and receiving tolls for the use of it. The intention of the legislature was to prohibit the establishment, without proper authority, of private "ferries" in the immediate neighbourhood of public ferries, but through an inadvertence in the drafting of section 13 the word "ferry-boat", which occurred in the corresponding section of Bengal Regulation VI of 1819, was used instead of "ferry". The main object of this Bill is to correct the oversight.

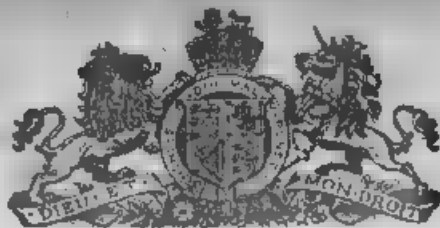
2. Occasion having thus arisen for amending the Act, the opportunity has been taken to provide for the tolls of public ferries being let, with the previous sanction of the Local Government, otherwise than by public auction, and for any term. Contracts between the Government of India and Railway Companies sometimes provide for the establishment of ferries by the Companies, and it occasionally happens that Companies desire to establish the ferries at or near places where public ferries already exist. In such cases there may be insufficient traffic to admit of two ferries being worked remuneratively side by side, and the Local Government may find it convenient to let the public ferry to the Company for a long term of years. The Bengal Legislative Council, it may be observed, has recently, in the Bengal Ferries Act, 1885, omitted the restriction under which the term of a lease was limited to five years. The establishment of steam-ferries may involve heavy expenditure and entitle their promoters to the security afforded by leases for long terms.

*The 1st August, 1885.*

T. C. HOPE.

D. FITZPATRICK,

*Secy. to the Govt. of India.*



# The Gazette of India.

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## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 12th August, 1885, and was referred to a Select Committee:—

No. 15 OF 1885.

*A Bill to amend the Northern India Ferries Act, 1878.*

WHEREAS it is expedient to amend the Northern India Ferries Act, 1878; It is hereby enacted as follows:—

Substitution of new section for section 8, and amendment of section 16.

1. (1) For section 8 the following shall be substituted, namely:—

"8. The Magistrate of the district may, from time to time, let the tolls of any public ferry by

public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Local Government.

"The lessee shall conform to the rules made under this Act for the management and control of such ferry, and may be required by the Ma-

gistrate of the district to give such security for his good conduct and for the punctual payment of the rent as such Magistrate thinks fit.

"When the tolls are put up to public auction, the Magistrate of the district, or the officer conducting the auction on his behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction."

(2) In the third paragraph of section 15, for the word "auction" the word "lease" shall be substituted.

Amendment of section 13, and substitution of new section for section 20.

2. (1) For the first paragraph of section 13 the following shall be substituted, namely:—

"Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry."

(2) For section 20 the following shall be substituted, namely:—

"20. Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions."

## STATEMENT OF OBJECTS AND REASONS.

THE necessity of amending section 13 of the Northern India Ferries Act, 1878, has been brought to the notice of the Government of India by a recent judgment of the High Court for the North-Western Provinces. In the case before the Court the accused persons had established a bridge-of-boats in the immediate neighbourhood of a public ferry. A bridge-of-boats is a "ferry" within the meaning of the Act, but section 13, in its present form, does not prohibit the keeping of a "ferry", but only of a "ferry-boat", within certain limits.

While, therefore, the accused would have committed an offence if they had kept a ferry-boat for the purpose of plying for hire, they had committed no offence by establishing a bridge-of-boats and receiving tolls for the use of it. The intention of the legislature was to prohibit the establishment, without proper authority, of private "ferries" in the immediate neighbourhood of public ferries, but through an inadvertence in the drafting of section 13 the word "ferry-boat", which occurred in the corresponding section of Bengal Regulation VI of 1819, was used instead of "ferry". The main object of this Bill is to correct the oversight.

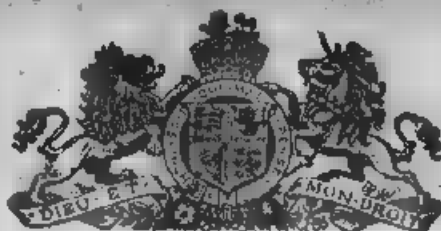
2. Occasion having thus arisen for amending the Act, the opportunity has been taken to provide for the tolls of public ferries being let, with the previous sanction of the Local Government, otherwise than by public auction, and for any term. Contracts between the Government of India and Railway Companies sometimes provide for the establishment of ferries by the Companies, and it occasionally happens that Companies desire to establish the ferries at or near places where public ferries already exist. In such cases there may be insufficient traffic to admit of two ferries being worked remuneratively side by side, and the Local Government may find it convenient to let the public ferry to the Company for a long term of years. The Bengal Legislative Council, it may be observed, has recently, in the Bengal Ferries Act, 1885, omitted the restriction under which the term of a lease was limited to five years. The establishment of steam-ferries may involve heavy expenditure and entitle their promoters to the security afforded by leases for long terms.

*The 1st August, 1885.*

T. C. HOPE,

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## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 12th August, 1885, and was referred to a Select Committee:—

No. 15 of 1885.

*A Bill to amend the Northern India Ferries Act, 1878.*

WHEREAS it is expedient to amend the Northern India Ferries Act, 1878; It is hereby enacted as follows:—

Substitution of new section for section 8, and amendment of section 15.

1. (1) For section 8 the following shall be substituted, namely:—

"8. The Magistrate of the district may, from time to time, let the tolls of any public ferry by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Local Government.

"The lessee shall conform to the rules made under this Act for the management and control of such ferry, and may be required by the Ma-

gistrate of the district to give such security for his good conduct and for the punctual payment of the rent as such Magistrate thinks fit.

"When the tolls are put up to public auction, the Magistrate of the district, or the officer conducting the auction on his behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction."

(2) In the third paragraph of section 15, for the word "auction" the word "lease" shall be substituted.

Amendment of section 15, and substitution of new section for section 26.

2. (1) For the first paragraph of section 15 the following shall be substituted, namely:—

"Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry, to or from any point within a distance of two miles from the limits of a public ferry."

(2) For section 26 the following shall be substituted, namely:—

"26. Whoever establishes, maintains or works a ferry in contravention of the provisions of section 12 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions."

## STATEMENT OF OBJECTS AND REASONS.

The necessity of amending section 13 of the Northern India Ferries Act, 1878, has been brought to the notice of the Government of India by a recent judgment of the High Court for the North-Western Provinces. In the case before the Court the accused persons had established a bridge-of-boats in the immediate neighbourhood of a public ferry. A bridge-of-boats is a "ferry" within the meaning of the Act, but section 13, in its present form, does not prohibit the keeping of a "ferry", but only of a "ferry-boat", within certain limits.

While, therefore, the accused would have committed an offence if they had kept a ferry-boat for the purpose of plying for hire, they had committed no offence by establishing a bridge-of-boats and receiving tolls for the use of it. The intention of the legislature was to prohibit the establishment, without proper authority, of private "ferries" in the immediate neighbourhood of public ferries, but through an inadvertence in the drafting of section 18 the word "ferry-boat", which occurred in the corresponding section of Bengal Regulation VI of 1819, was used instead of "ferry". The main object of this Bill is to correct the oversight.

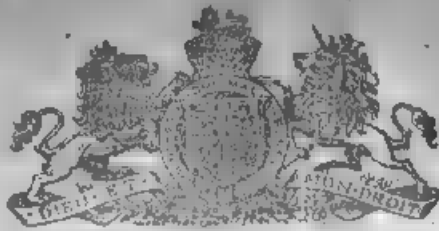
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*The 1st August, 1885.*

T. C. HOPE.

D. FITZPATRICK,

*Secy. to the Govt. of India.*



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## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

(First publication.)

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885, and was referred to a Select Committee:—

No. 16 of 1885.

*A Bill to declare and amend the Law relating to the Stone Mahāl in the District of Mirzapur in the North-Western Provinces.*

WHEREAS it is expedient to declare and amend the law relating to the Stone Mahāl in the district of Mirzapur in the North-Western Provinces; It is hereby enacted as follows:—

#### Preliminary.

1. (1) This Act may be called the Mirzapur Stone Mahāl Act, 1885; and

(2) It shall come into force on such day as the Local Government, by notification in the official Gazette, appoints.

(3) The power conferred by this Act on the Local Government to make rules may be exercised at any time after the passing of this Act; but a rule so made shall not take effect until the Act comes into force.

2. On and from the day on which this Act comes into force, Bengal Regulation II of 1800 (a Regulation for laying open to public use the stone-quarries at Chunar, Ghazipur [properly called Ghazipur] and Mirzapur, in the Province of Benares, subject to a fixed duty) shall be repealed.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "the district" means the whole of the area comprised in the district of Mirzapur as consti-

tuted at the time of the passing of this Act, except the lands described in the schedule to this Act:

(2) "Collector" means the Collector of the Mirzapur district and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act:

(3) "Commissioner" means the Commissioner of the Benares Division:

(4) "Board" means the Board of Revenue of the North-Western Provinces:

(5) "quarry" means to take from the surface as well as to extract from a quarry:

(6) "transport" means to remove from one place to another within the district:

(7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

#### Rights of the Government and the Public.

4. The Government is entitled to levy duty on all stone quarried in the district.

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

6. (1) Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land.

(2) A person may, if and so far as the rules made under this Act permit, acquire an exclusive

right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section (1), to open a quarry, or quarry stone, in any land, or as to the mode of exercising an exclusive right to open a quarry, or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute, or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

#### Rules.

7. (1) The Local Government may, from time to time, make rules consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters:—

- (a) the quarrying of stone, and the places where stone may be quarried;
- (b) conflicting claims to exercise the right of opening a quarry or quarrying stone;
- (c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist;
- (d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined;
- (e) the transport of stone;
- (f) the storing of stone;
- (g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the Government or to a farmer to whom the Government has leased the duties leviable thereon, and the time when, the place where, and the persons by whom, the duty is to be paid;
- (h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions;
- (i) the custody and disposal of stone confiscated or seized under this Act; and,
- (j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

8. (1) The Local Government shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made in such manner as in the opinion of the Local Government is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

9. Every rule made under section 7 shall be published in the official Gazette in English and in such other language or languages as the Local Government directs, and that publication shall be conclusive proof that the rule has been made as required by section 8.

10. If a rule made under section 7, sub-section (1), clause (g), alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published.

#### Offences.

11. If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section (1), clause (g), he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed; and the Court convicting him may further order the confiscation of the stone.

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person.

13. A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence.

14. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7: Provided that a person shall not be punished twice for the same offence.

#### Arrest, Search and Seizure.

15. Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may—

- (a) proceed, in respect of an offence under section 11 or against a rule made under

section 7 which in his presence a person commits or is accused of committing, in the same manner as a police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1862, in respect of a non-cognizable offence which in his presence a person commits or is accused of committing; and

(2) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7, has been committed, and, if the stone is being transported, use, for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

16. (1) A Magistrate may issue his warrant Search-warrants. for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

(2) The provisions of the Code of Criminal Procedure, 1862, relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

#### Recovery of Duty.

17. An arrear of duty payable to the Government under a rule made under section 7, sub-section (1), clause (g), and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any), as if it were an arrear of land-revenue.

#### Appeal and Revision.

18. (1) Decisions and orders passed by the Collector under this Act or any rule made under this Act shall be appealable to the Commissioner in the manner provided by the law for the time being in force in the district respecting appeals from the orders of the Collector to the Commissioner in matters pertaining to land-revenue.

(2) The Board may revise any decision or order passed by the Collector under this Act or under any rule made under this Act, or by the Commissioner under sub-section (1).

#### Miscellaneous.

19. The rates of duty actually levied at the time of the passing of this Act shall continue to be

levied until the Act comes into force, and shall then be deemed to have been prescribed by a rule made under section 7, sub-section (1), clause (g).

20. (1) Notwithstanding anything hereinbefore contained, but subject to any rules which the Local Government may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The Local Government may, from time to time, by notification in the official Gazette, define the limits of the said tract for the purposes of this section.

### THE SCHEDULE.

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF MIRZAPUR.

[ See section 3, clause (1). ]

Parganá or tappa.	Village.	Remarks.
Kantit	Bakhta	These villages were transferred from the Allahabad district in 1840.
	Bargaura Rajman	
	Palti	
	Sarmatwa	
	Barha Khurd	
	Basaura	
	Chak Katra	
	Chak Madari	
	Dogauli	
	Rasauli	
Upraudh	Katahra	These villages were transferred from the Allahabad district in 1861.
	Gunguti	
	Hargarh	
	Nairi Katari	
	Durjanipur	
	Dochat	
	Mahunt	
	Mulshampur	
	Katra Lahoria Dih	
	Bhainsaur	
	Mahagarhi	

### STATEMENT OF OBJECTS AND REASONS.

In January, 1800, Bengal Regulation II of that year was passed for laying open to public use the stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, subject to a fixed duty.

2. The preamble to the Regulation runs as follows :—

"The stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, have been hitherto worked for the exclusive use of Government, and either let in farm, under the provisions contained in sections 81 and 82 of Regulation XXII, 1785, or managed (since August, 1797) by an agent, who disposed of the stones, at stated prices, chiefly in the city of Benares.

"With a view to encourage the excavation of the quarries, and bring a greater quantity of stones to sale for the general convenience of builders and others, a notification was published, under date the 9th April, 1799, that the stone-quarries in the Province of Benares had been laid open for public use, subject to a duty, the rates of which would be subsequently published for general information.

"In pursuance of this notification, and for the purpose of determining the rates of duty upon all stones quarried by individuals subsequent thereto, or which may be hereafter quarried under this Regulation, the following rules have been enacted by the Governor General in Council, to be considered in force, as far as they respect the rates of duty, from the 9th day of April last, and in all other respects from the period of their promulgation in the Province of Benares."

3. At the time when the Regulation was passed one of the principal quarries was at a place which in the records of 1797-1800 is variously called "Cassepoor", "Cassipoor", "Cassepoire", and "Ghasseepoor". The place is a village in pargana Bhagwat in the Chunar tahsil of the Mirzapur district, and the name assigned to it in Calcutta, where the Regulation was drafted, was "Ghazeepoor," though in the rough draft prepared by the Collector of Benares the word correctly appears as "Ghasseepoor". The error and its origin are noticed here, because the mention in Regulation II of 1800 of the quarries at Ghazipur, though there is no stone of any sort in the Ghazipur district, has often been the subject of comment, and has been cited as an illustration of the ignorance which characterised the local administration after Mr. Duncan's departure from Benares.

4. Much of the Regulation of 1800 is now obsolete, and those portions of it to which operation may still be given are very defective. For instance, the only punishment provided in the case of a person detected in fraudulently removing stone without payment of duty is the confiscation of the stone and of the cattle and carriages used in carrying it. As the owners of the cattle and carriages are for the most part ignorant people, hired by the day, and can often have little or no means of knowing whether or not the stone they are transporting is stone in respect of which an offence has been committed, it would generally be inequitable to confiscate their property. The person who does deserve punishment is the dealer who procures the use of their cattle and carriages for the purpose of effecting the fraud he is committing on the revenue, and for him the confiscation of the stone is a wholly insufficient penalty. Again, if stone removed without payment of duty has been used in the construction of a house or well, there are difficulties in the way of seizing and confiscating it. Thus, the penalties prescribed in the Regulation are apt to fall on the wrong people, and, when they do fall on the right people, to be either wholly inadequate or so harsh as to be practically unimpossible.

5. For this reason, and because the Regulation has reference generally to a state of things that no longer exists, a new enactment for regulating the administration of the Stone Mahal has become necessary.

6. As stone is not found beyond the limits of the Mirzapur district in any part of the Province of Benares, it has been considered unnecessary at present to re-enact section 14 of the Regulation, and the Bill extends therefore to so much of the Mirzapur district only as formed part of the Province of Benares in the year 1800.

7. No proprietor is entitled to levy duty in any form on stone quarried in his land. On this subject Mr. Thomason, the Lieutenant-Governor of the North-Western Provinces, wrote as follows in 1846:—

"The zamindars have no concern whatever with the quarries. The persons who work the quarries open them, take stone from them and leave them without consulting the zamindars."

8. Section 7 of the Bill specifies the matters which the Local Government may regulate by rules. Among those matters are the conflicting claims of persons to exercise the common right of quarrying, and the conditions on which an exclusive right may be acquired to quarry stone within certain local limits. An exclusive right can, by the custom of the district, be acquired to a circular area of which the radius is the distance the opener of a quarry can throw a stone with his left hand. This custom is analogous to that obtaining in Derbyshire, where the first discoverer of a vein of lead-ore is entitled to have assigned to him two acres of ground, and to that obtaining in certain parts of Cornwall, where tinners may bound unappropriated waste to the extent of an acre. So also the free miners of the Forest of Dean are entitled to three gales or allotments for coal or iron mining (1 & 2 Vic., c. 43). The rules will define the period after which the exclusive right to a quarry which has been abandoned will cease to exist. Section 7 provides also for rules being made to regulate exemptions from, and reductions of, duty. The Local Government has exempted His Highness the Maharaja of Benares from payment of duty on stone quarried for his own use in pargana Kera Mangror, and has reduced the duty on ballast required by the East Indian Railway Company.

9. Section 8 requires the publication of proposed rules before they are made, and section 10 provides that no rule altering a rate of duty shall have effect till the expiration of one year from the date on which the rule was published. Thus, persons interested in the Stone Mahal will have an opportunity of expressing their opinion on the rules which the Local Government from time to time proposes to make under the Act, and contractors will have warning of any adverse change in the rates of duty in time to admit of their shaping their contracts to meet the change.

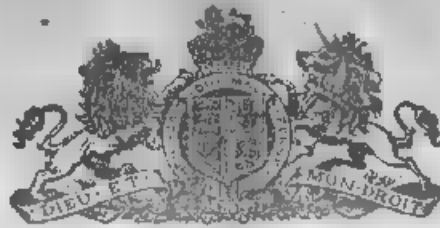
10. There is little else in the Bill that calls for remark. Section 10 saves for the present the existing rates of duty which, with very slight variations, have been in force for nearly forty years; and section 20 continues to the inhabitants of the hills the privilege conceded to them by the fourth clause of section 82 of Regulation XXII of 1795, and is modified in their favour by section 15 of Regulation II of 1800.

The 12th October, 1885.

C. P. ILBERT.

D. FITZPATRICK,

Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 24, 1885.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 16th October, 1885, and was referred to a Select Committee:—

No. 16 OF 1885.

*A Bill to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the North-Western Provinces.*

WHEREAS it is expedient to declare and amend the law relating to the Stone Mahal in the district of Mirzapur in the North-Western Provinces; It is hereby enacted as follows:—

#### Preliminary.

1. (1) This Act may be called the Mirzapur Stone Mahal Act, 1885; and

(2) It shall come into force on such day as the Local Government, by notification in the official Gazette, appoints.

(3) The power conferred by this Act on the Local Government to make rules may be exercised at any time after the passing of this Act; but a rule so made shall not take effect until the Act comes into force.

2. On and from the day on which this Act comes into force, Bengal Regulation II of 1800 (a Regulation for laying open to public use the stone-quarries at Chunar, Ghazipur [properly called Ghazipur] and Mirzapur, in the Province of Benares, subject to a fixed duty) shall be repealed.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "the district" means the whole of the area comprised in the district of Mirzapur as consti-

tuted at the time of the passing of this Act, except the lands described in the schedule to this Act:

(2) "Collector" means the Collector of the Mirzapur district and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act:

(3) "Commissioner" means the Commissioner of the Benares Division:

(4) "Board" means the Board of Revenue of the North-Western Provinces:

(5) "quarry" means to take from the surface as well as to extract from a quarry:

(6) "transport" means to remove from one place to another within the district:

(7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

#### Rights of the Government and the Public.

4. The Government is entitled to levy duty on all stone quarried in the district.

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

6. (1) Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land.

(2) A person may, if and so far as the rules made under this Act permit, acquire an exclusive

right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section (1), to open a quarry, or quarry stone, in any land, or as to the mode of exercising an exclusive right to open a quarry, or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute, or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

#### Rules.

7. (1) The Local Government may, from time to time, make rules consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters:—

- (a) the quarrying of stone, and the places where stone may be quarried;
- (b) conflicting claims to exercise the right of opening a quarry or quarrying stone;
- (c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist;
- (d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined;
- (e) the transport of stone;
- (f) the storing of stone;
- (g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the Government or to a farmer to whom the Government has leased the duties leviable thereon, and the time when, the place where, and the persons by whom, the duty is to be paid;
- (h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions;
- (i) the custody and disposal of stone confiscated or seized under this Act; and,
- (j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

8. (1) The Local Government shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made in such manner as in the opinion of the Local Government is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

9. Every rule made under section 7 shall be published in the official Gazette in English and in such other language or languages as the Local Government directs, and that publication shall be conclusive proof that the rule has been made as required by section 8.

10. If a rule made under section 7, sub-section (1), clause (g), alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published.

#### Offences.

11. If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section (1), clause (g), he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed; and the Court convicting him may further order the confiscation of the stone.

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person.

13. A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence.

14. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7: Provided that a person shall not be punished twice for the same offence.

#### Arrest, Search and Seizure.

15. Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may—

- (a) proceed, in respect of an offence under section 11 or against a rule made under

of 1882.

section 7 which in his presence a person commits or is accused of committing, in the same manner as a police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1882, in respect of a non-cognizable offence which in his presence a person commits or is accused of committing; and

- (b) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7 has been committed, and, if the stone is being transported, use, for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

16. (1) A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any

building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

of 1882.

(2) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

#### Recovery of Duty.

17. An arrear of duty payable to the Govern-

ment under a rule made under section 7, sub-section (1), clause (g), and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any), as if it were an arrear of land-revenue.

#### Appeal and Revision.

18. (1) Decisions and orders passed by the Collector under this Act or any rule made under this

Act shall be appealable to the Commissioner in the manner provided by the law for the time being in force in the district respecting appeals from the orders of the Collector to the Commissioner in matters pertaining to land-revenue.

(2) The Board may revise any decision or order passed by the Collector under this Act or under any rule made under this Act, or by the Commissioner under sub-section (1).

#### Miscellaneous.

19. The rates of duty actually levied at the saving of existing time of the passing of this rates of duty. Act shall continue to be

levied until the Act comes into force, and shall then be deemed to have been prescribed by a rule made under section 7, sub-section (1), clause (g).

20. (1) Notwithstanding anything heretofore contained, but subject to any rules which the Local Government may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vinadhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The Local Government may, from time to time, by notification in the official Gazette, define the limits of the said tract for the purposes of this section.

### THE SCHEDULE.

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF MIRZAPUR.

[ See section 3, clause (1). ]

Pargana or taluqa.	Village.	Remarks.
Kantit	Bakhta	These villages were transferred from the Allahabad district in 1840.
	Bargaura Rajman	
	Palti	
	Surmatawa	
	Barha Khurd	
	Basaura	
	Chak Katra	
	Chak Madari	
	Dogauli	
	Rasauli	
Upraudh	Katahra	These villages were transferred from the Allahabad district in 1861.
	Gunguti	
	Hargarh	
	Nairi Katari	
	Durjanipur	
	Deohat	
	Mahuat	
	Maheshpur	
	Katra Lahoria	
	Dih	
	Rhainsaur	
	Mahagarhi	

### STATEMENT OF OBJECTS AND REASONS.

In January, 1860, Bengal Regulation II of that year was passed for laying open to public use the stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, subject to a fixed duty.

2. The preamble to the Regulation runs as follows:—

"The stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, have been hitherto worked for the exclusive use of Government, and either let in farm, under the provisions contained in sections 81 and 82 of Regulation XXII, 1796, or managed (since August, 1797) by an agent, who disposed of the stones, at stated prices, chiefly in the city of Benares.

"With a view to encourage the excavation of the quarries, and bring a greater quantity of stones to sale for the general convenience of builders and others, a notification was published, under date the 9th April, 1799, that the stone-quarries in the Province of Benares had been laid open for public use, subject to a duty, the rates of which would be subsequently published for general information.

"In pursuance of this notification, and for the purpose of determining the rates of duty upon all stones quarried by individuals subsequent thereto, or which may be hereafter quarried under this Regulation, the following rules have been enacted by the Governor General in Council, to be considered in force, as far as they respect the rates of duty, from the 9th day of April last, and in all other respects from the period of their promulgation in the Province of Benares."

3. At the time when the Regulation was passed one of the principal quarries was at a place which in the records of 1797-1800 is variously called "Cassepoor", "Cassipoor", "Cassepoore", and "Ghasseepoor". The place is a village in pargana Bhagwat in the Chunar tahsil of the Mirzapur district, and the name assigned to it in Calcutta, where the Regulation was drafted, was "Ghazeepoor," though in the rough draft prepared by the Collector of Benares the word correctly appears as "Ghasseepoor". The error and its origin are noticed here, because the mention in Regulation II of 1800 of the quarries at Ghazipur, though there is no stone of any sort in the Ghazipur district, has often been the subject of comment, and has been cited as an illustration of the ignorance which characterised the local administration after Mr. Duncan's departure from Benares.

4. Much of the Regulation of 1800 is now obsolete, and those portions of it to which operation may still be given are very defective. For instance, the only punishment provided in the case of a person detected in fraudulently removing stone without payment of duty is the confiscation of the stone and of the cattle and carriages used in carrying it. As the owners of the cattle and carriages are for the most part ignorant people, hired by the day, and can often have little or no means of knowing whether or not the stone they are transporting is stone in respect of which an offence has been committed, it would generally be inequitable to confiscate their property. The person who does deserve punishment is the dealer who procures the use of their cattle and carriages for the purpose of effecting the fraud he is committing on the revenue, and for him the confiscation of the stone is a wholly insufficient penalty. Again, if stone removed without payment of duty has been used in the construction of a house or wall, there are difficulties in the way of seizing and confiscating it. Thus, the penalties prescribed in the Regulation are apt to fall on the wrong people, and, when they do fall on the right people, to be either wholly inadequate or so harsh as to be practically unimposable.

5. For this reason, and because the Regulation has reference generally to a state of things that no longer exists, a new enactment for regulating the administration of the Stone Mahal has become necessary.

6. As stone is not found beyond the limits of the Mirzapur district in any part of the Province of Benares, it has been considered unnecessary at present to re-enact section 14 of the Regulation, and the Bill extends therefore to so much of the Mirzapur district only as formed part of the Province of Benares in the year 1800.

7. No proprietor is entitled to levy duty in any form on stone quarried in his land. On this subject Mr. Thomason, the Lieutenant-Governor of the North-Western Provinces, wrote as follows in 1846:—

"The zamindars have no concern whatever with the quarries. The persons who work the quarries open them, take stone from them and leave them without consulting the zamindars."

8. Section 7 of the Bill specifies the matters which the Local Government may regulate by rules. Among those matters are the conflicting claims of persons to exercise the common right of quarrying, and the conditions on which an exclusive right may be acquired to quarry stone within certain local limits. An exclusive right can, by the custom of the district, be acquired to a circular area of which the radius is the distance the opener of a quarry can throw a stone with his left hand. This custom is analogous to that obtaining in Derbyshire, where the first discoverer of a vein of lead-ore is entitled to have assigned to him two meers of ground, and to that obtaining in certain parts of Cornwall, where tinners may bound unappropriated waste to the extent of an acre. So also the free miners of the Forest of Dean are entitled to three gales or allotments for coal or iron mining (1 & 2 Vic., c. 43). The rules will define the period after which the exclusive right to a quarry which has been abandoned will cease to exist. Section 7 provides also for rules being made to regulate exemptions from, and reductions of, duty. The Local Government has exempted His Highness the Maharaja of Benares from payment of duty on stone quarried for his own use in pargana Kora Mangrur, and has reduced the duty on ballast required by the East Indian Railway Company.

9. Section 8 requires the publication of proposed rules before they are made, and section 10 provides that no rule altering a rate of duty shall have effect till the expiration of one year from the date on which the rule was published. Thus, persons interested in the Stone Mahal will have an opportunity of expressing their opinion on the rules which the Local Government from time to time proposes to make under the Act, and contractors will have warning of any adverse change in the rates of duty in time to admit of their shaping their contracts to meet the change.

10. There is little else in the Bill that calls for remark. Section 19 saves for the present the existing rates of duty which, with very slight variations, have been in force for nearly forty years; and section 20 continues to the inhabitants of the hills the privilege conceded to them by the fourth clause of section 32 of Regulation XXI of 1795, as amended in their favour by section 15 of Regulation II of 1800.

The 12th October, 1885.

C. P. ILBERT.

D. FITZPATRICK,  
Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

(First publication.)

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885:—

## No. 17 OF 1885.

*A Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law.*

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Maimons, and questions have from time to time arisen in the case of some of those persons as to the law by which in certain particulars they are governed, and whereas some of those persons consider that they are governed or desire to be governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient that a procedure should be provided whereby the applicability of that law to them in those particulars could be placed beyond dispute;

It is hereby enacted as follows:—

1. This Act may be called the Maimons Act, 1886.
2. (1) When any Maimon who has attained his majority has declared in manner next hereinafter pro-
- Short title.
- Declaration to be made by Maimons.

vided that he desires to be governed by the Muhammadan law as established in the Hanafi School, that law shall thereafter, notwithstanding any custom to the contrary, apply to him in each part of British India in the same particulars and to the same extent as it applies to other persons in that part of British India who are governed by it.

(2) A declaration to take effect under sub-section (1) must be made by a written instrument under the hand of the person making the same, in the form given in the schedule to this Act or in a form to the like effect, and must—

- (a) if made in a part of British India in which [Act III of the Indian Registration Act, 1877, is for 1877, s. 33.] the time being in force, be registered during his lifetime under that Act; and
- (b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

(3) Nothing in this Act shall prevent any person being or becoming subject to any form of Muhammadan law in any other manner than that provided by this Act.

## THE SCHEDULE.

## FORM OF DECLARATION.

I hereby declare that I wish to be governed to the extent provided by the Maimons Act, 1886, by the Muhammadan law as established in the Hanafi School.

## STATEMENT OF OBJECTS AND REASONS.

1. The Maimons, like the Khojās, were originally Hindus, and have been converted to Muhammadanism, but though they are said, as a rule, to be Muhammadans in a fuller sense than the great body of the Khojās, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu customs instead of by Muhammadan law.

2. From a petition lately received by the Government, it appears that to a large number of the Maimons in question this position is not satisfactory. They hold that they should be governed, or they wish to be governed, by the Muhammadan law of the Hanafi School, and they ask that it may be declared by the legislature that they are so governed.

3. It is not to be expected that any such declaration would be made by the legislature unless it were shown that it was desired by the entire community to which it would apply, and it must be admitted that there is a want of unanimity among them on this subject.

It seems but reasonable, however, that some simple procedure should be provided by which the petitioners and other members of the Maimon class, who may be of their way of thinking, would be enabled to secure the application to themselves of those portions of the Muhammadan law which are applied by our Courts to ordinary Muhammadans, and to avoid all risk of being held to be governed by customs which are distasteful to them, and which it is to be apprehended are far from being well settled.

4. Such a procedure is to be found in the clause which it has been proposed to insert in the Khojá Succession Bill now under consideration, and which provides that a Khojá of full age may by a registered declaration withdraw himself from the peculiar law of succession by which Khojás are to be governed and place himself under the Muhammadan law of succession.

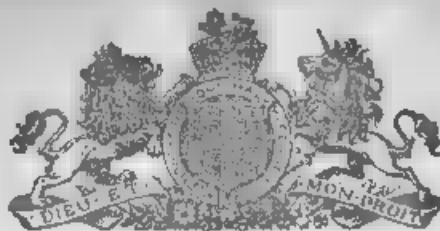
The present Bill has been prepared with a view to providing a similar procedure for Maimons. It is, however, not restricted to the matter of succession, as the difficulty which it is intended to meet is not confined to that branch of the law; and as, from all that has appeared up to this, the Hanafi form of the Muhammadan law is the only one to which Maimons would desire to be subject, it provides for the application to them only of that form of the law.

5. As it is obviously undesirable that any doubt should be thrown on the legal position of Maimons who may be already fully subject to the Muhammadan law, or that it should be suggested that a Maimon could not after the passing of the Bill become fully subject to that law in any way in which he, in common with Hindus and others, might become subject to it at present, a clause has been inserted in the Bill, providing that nothing therein contained shall prevent any person from being or becoming subject to any form of Muhammadan law in any other manner than that provided by the Bill.

AMÍR ALÍ.

*The 15th October, 1885.*

D. FITZPATRICK,  
*Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 31, 1885.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885, and was referred to a Select Committee:—

No. 16 of 1885.

*A Bill to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the North-Western Provinces.*

WHEREAS it is expedient to declare and amend the law relating to the Stone Mahal in the district of Mirzapur in the North-Western Provinces; It is hereby enacted as follows:—

#### Preliminary.

1. (1) This Act may be called the Mirzapur Stone Mahal Act, 1885; and

(2) It shall come into force on such day as the Local Government, by notification in the official Gazette, appoints.

(3) The power conferred by this Act on the Local Government to make rules may be exercised at any time after the passing of this Act; but a rule so made shall not take effect until the Act comes into force.

2. On and from the day on which this Act comes into force, Bengal Regulation II of 1800 (a Regulation for laying open to public use the stone-quarries at Chunar, Ghazipur [properly called Ghazipur] and Mirzapur, in the Province of Benares, subject to a fixed duty) shall be repealed.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "the district" means the whole of the area comprised in the district of Mirzapur as consti-

tuted at the time of the passing of this Act, except the lands described in the schedule to this Act:

(2) "Collector" means the Collector of the Mirzapur district and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act:

(3) "Commissioner" means the Commissioner of the Benares Division:

(4) "Board" means the Board of Revenue of the North-Western Provinces:

(5) "quarry" means to take from the surface as well as to extract from a quarry:

(6) "transport" means to remove from one place to another within the district:

(7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

#### Rights of the Government and the Public.

4. The Government is entitled to levy duty on all stone quarried in the district.

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

6. (1) Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land.

(2) A person may, if and so far as the rules made under this Act permit, acquire an exclusive

right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as these rules permit.

(3) If a dispute as to the right referred to in sub-section (1), to open a quarry, or quarry stone, in any land, or as to the mode of exercising an exclusive right to open a quarry, or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute, or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

#### Rules.

7. (1) The Local Government may, from time to time, make rules consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters:—

- (a) the quarrying of stone, and the places where stone may be quarried;
- (b) conflicting claims to exercise the right of opening a quarry or quarrying stone;
- (c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist;
- (d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined;
- (e) the transport of stone;
- (f) the storing of stone;
- (g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the Government or to a farmer to whom the Government has leased the duties leviable thereon, and the time when, the place where, and the persons by whom, the duty is to be paid;
- (h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions;
- (i) the custody and disposal of stone confiscated or seized under this Act; and,
- (j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

8. (1) The Local Government shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made in such manner as in the opinion of the Local Government is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

9. Every rule made under section 7 shall be published in the official Gazette in English and in such other language or languages as the Local Government directs, and that publication shall be conclusive proof that the rule has been made as required by section 8.

10. If a rule made under section 7, sub-section (1), clause (g), alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published.

#### Offences.

11. If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section (1), clause (g), he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed; and the Court convicting him may further order the confiscation of the stone.

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person.

13. A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence.

14. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7; Provided that a person shall not be punished twice for the same offence.

#### Arrest, Search and Seizure.

15. Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may—

- (a) proceed, in respect of an offence under section 11 or against a rule made under

of 1882.

section 7 which in his presence a person commits or is accused of committing, in the same manner as a police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1862; in respect of a non-cognizable offence which in his presence a person commits or is accused of committing; and

- (b) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7 has been committed, and, if the stone is being transported, use, for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

16. (1) A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

of 1882.

(2) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

#### Recovery of Duty.

17. An arrear of duty payable to the Government under a rule made under section 7, sub-section (1), clause (g), and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any), as if it were an arrear of land-revenue.

#### Appeal and Revision.

18. (1) Decisions and orders passed by the Collector under this Act or any rule made under this Act shall be appealable to the Commissioner in the manner provided by the law for the time being in force in the district respecting appeals from the orders of the Collector to the Commissioner in matters pertaining to land-revenue.

(2) The Board may revise any decision or order passed by the Collector under this Act or under any rule made under this Act, or by the Commissioner under sub-section (1).

#### Miscellaneous.

19. The rates of duty actually levied at the time of the passing of this Act shall continue to be

levied until the Act comes into force, and shall then be deemed to have been prescribed by a rule made under section 7, sub-section (1), clause (g).

20. (1) Notwithstanding anything hereinbefore contained, but subject to any rules which the Local Government may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The Local Government may, from time to time, by notification in the official Gazette, define the limits of the said tract for the purposes of this section.

### THE SCHEDULE.

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF MINZAPUR.

[ See section 3, clause (1). ]

Parganá or Tappa.	Village.	Remarks.
Kantit	Bakhta	These villages were transferred from the Allahabad district in 1840.
	Bargaura Rajman	
	Palti	
	Suematwa	
	Barha Khurd	
	Baanura	
	Chak Katra	
	Chak Madari	
	Dogauli	
	Rasauli	
Upraudh	Katalra	These villages were transferred from the Allahabad district in 1861.
	Gunguti	
	Hargarh	
	Nairi Katari	
	Durjanipur	
	Deohat	
	Mahuat	
	Maheshpur	Dih
	Katra Lahoria	
	Bhainsaur	
	Mahagarchi	

### STATEMENT OF OBJECTS AND REASONS.

In January, 1800, Bengal Regulation II of that year was passed for laying open to public use the stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, subject to a fixed duty.

2. The preamble to the Regulation runs as follows:—

"The stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, have been hitherto worked for the exclusive use of Government, and either let in farm, under the provisions contained in sections 81 and 82 of Regulation XXII, 1795, or managed (since August, 1797) by an agent, who disposed of the stones, at stated prices, chiefly in the city of Benares.

"With a view to encourage the excavation of the quarries, and bring a greater quantity of stones to sale for the general convenience of builders and others, a notification was published, under date the 9th April, 1799, that the stone-quarries in the Province of Benares had been laid open for public use, subject to a duty, the rates of which would be subsequently published for general information.

"In pursuance of this notification, and for the purpose of determining the rates of duty upon all stones quarried by individuals subsequent thereto, or which may be hereafter quarried under this Regulation, the following rules have been enacted by the Governor General in Council, to be considered in force, as far as they respect the rates of duty, from the 9th day of April last, and in all other respects from the period of their promulgation in the Province of Benares."

3. At the time when the Regulation was passed one of the principal quarries was at a place which in the records of 1797-1800 is variously called "Cassepore", "Cassipore", "Cassepore", and "Ghasseepore". The place is a village in pargana Bhagwat in the Chunar tahsil of the Mirzapur district, and the name assigned to it in Calcutta, where the Regulation was drafted, was "Ghazeeepore," though in the rough draft prepared by the Collector of Benares the word correctly appears as "Ghasseepore". The error and its origin are noticed here, because the mention in Regulation II of 1800 of the quarries at Ghazipur, though there is no stone of any sort in the Ghazipur district, has often been the subject of comment, and has been cited as an illustration of the ignorance which characterised the local administration after Mr. Duncan's departure from Benares.

4. Much of the Regulation of 1800 is now obsolete, and those portions of it to which operation may still be given are very defective. For instance, the only punishment provided in the case of a person detected in fraudulently removing stone without payment of duty is the confiscation of the stone and of the cattle and carriages used in carrying it. As the owners of the cattle and carriages are for the most part ignorant people, hired by the day, and can often have little or no means of knowing whether or not the stone they are transporting is stone in respect of which an offence has been committed, it would generally be inequitable to confiscate their property. The person who does deserve punishment is the dealer who procures the use of their cattle and carriages for the purpose of effecting the fraud he is committing on the revenue, and for him the confiscation of the stone is a wholly insufficient penalty. Again, if stone removed without payment of duty has been used in the construction of a house or well, there are difficulties in the way of seizing and confiscating it. Thus, the penalties prescribed in the Regulation are apt to fall on the wrong people, and, when they do fall on the right people, to be either wholly inadequate or so harsh as to be practically unimposable.

5. For this reason, and because the Regulation has reference generally to a state of things that no longer exists, a new enactment for regulating the administration of the Stone Mahal has become necessary.

6. As stone is not found beyond the limits of the Mirzapur district in any part of the Province of Benares, it has been considered unnecessary at present to re-enact section 14 of the Regulation, and the Bill extends therefore to so much of the Mirzapur district only as formed part of the Province of Benares in the year 1800.

7. No proprietor is entitled to levy duty in any form on stone quarried in his land. On this subject Mr. Thomason, the Lieutenant-Governor of the North-Western Provinces, wrote as follows in 1846:—

"The zamindars have no concern whatever with the quarries. The persons who work the quarries open them, take stone from them and leave them without consulting the zamindars."

8. Section 7 of the Bill specifies the matters which the Local Government may regulate by rules. Among those matters are the conflicting claims of persons to exercise the common right of quarrying, and the conditions on which an exclusive right may be acquired to quarry stone within certain local limits. An exclusive right can, by the custom of the district, be acquired to a circular area of which the radius is the distance the owner of a quarry can throw a stone with his left hand. This custom is analogous to that obtaining in Derbyshire, where the first discoverer of a vein of lead-ore is entitled to have assigned to him two meers of ground, and to that obtaining in certain parts of Cornwall, where tinners may bound unappropriated waste to the extent of an acre. So also the free miners of the Forest of Dean are entitled to three gales or allotments for coal or iron mining (1 & 2 Vic., c. 43). The rules will define the period after which the exclusive right to a quarry which has been abandoned will cease to exist. Section 7 provides also for rules being made to regulate exemptions from, and reductions of, duty. The Local Government has exempted His Highness the Maharaja of Benares from payment of duty on stone quarried for his own use in pargana Kora Mungror, and has reduced the duty on ballast required by the East Indian Railway Company.

9. Section 8 requires the publication of proposed rules before they are made, and section 10 provides that no rule altering a rate of duty shall have effect till the expiration of one year from the date on which the rule was published. Thus, persons interested in the Stone Mahal will have an opportunity of expressing their opinion on the rules which the Local Government from time to time proposes to make under the Act, and contractors will have warning of any adverse change in the rates of duty in time to admit of their shaping their contracts to meet the change.

10. There is little else in the Bill that calls for remark. Section 10 saves for the present the existing rates of duty which, with very slight variations, have been in force for nearly forty years; and section 20 continues to the inhabitants of the hills the privilege conceded to them by the fourth clause of section 52 of Regulation XXII of 1795, and maintained in their favour by section 35 of Regulation II of 1800.

*The 12th October, 1885.*

C. P. ILBERT.

D. FITZPATRICK,

*Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885:—

## No. 17 OF 1885.

*A Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law.*

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Maimons, and questions have from time to time arisen in the case of some of those persons as to the law by which in certain particulars they are governed, and whereas some of those persons consider that they are governed or desire to be governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient that a procedure should be provided whereby the applicability of that law to them in those particulars could be placed beyond dispute;

It is hereby enacted as follows:—

1. This Act may be called the Maimons Act, 1886.
2. (1) When any Maimon who has attained his majority has declared in manner next hereinafter provided by Maimons.

vided that he desires to be governed by the Muhammadan law as established in the Hanafi School, that law shall thereafter, notwithstanding any custom to the contrary, apply to him in each part of British India in the same particulars and to the same extent as it applies to other persons in that part of British India who are governed by it.

(2) A declaration to take effect under sub-section (1) must be made by a written instrument under the hand of the person making the same, in the form given in the schedule to this Act or in a form to the like effect, and must—

- (a) if made in a part of British India in which [Act III of the Indian Registration Act, 1877, is for 1877, c. 23.] the time being in force, be registered during his lifetime under that Act; and
- (b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

(3) Nothing in this Act shall prevent any person being or becoming subject to any form of Muhammadan law in any other manner than that provided by this Act.

## THE SCHEDULE.

## FORM OF DECLARATION.

I hereby declare that I wish to be governed to the extent provided by the Maimons Act, 18-6, by the Muhammadan law as established in the Hanafi School.

## STATEMENT OF OBJECTS AND REASONS.

1. The Maimons, like the Khojās, were originally Hindus, and have been converted to Muhammadanism, but though they are said, as a rule, to be Muhammadans in a fuller sense than the great body of the Khojās, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu customs instead of by Muhammadan law.

2. From a petition lately received by the Government, it appears that to a large number of the Maimons in question this position is not satisfactory. They hold that they should be governed, or they wish to be governed, by the Muhammadan law of the Hanafi School, and they ask that it may be declared by the legislature that they are so governed.

3. It is not to be expected that any such declaration would be made by the legislature unless it were shown that it was desired by the entire community to which it would apply, and it must be admitted that there is a want of unanimity among them on this subject.

It seems but reasonable, however, that some simple procedure should be provided by which the petitioners and other members of the Maimon class, who may be of their way of thinking, would be enabled to secure the application to themselves of those portions of the Muhammadan law which are applied by our Courts to ordinary Muhammadans, and to avoid all risk of being held to be governed by customs which are distasteful to them, and which it is to be apprehended are far from being well settled.

4. Such a procedure is to be found in the clause which it has been proposed to insert in the Khojā Succession Bill now under consideration, and which provides that a Khojā of full age may by a registered declaration withdraw himself from the peculiar law of succession by which Khojās are to be governed and place himself under the Muhammadan law of succession.

The present Bill has been prepared with a view to providing a similar procedure for Maimons. It is, however, not restricted to the matter of succession, as the difficulty which it is intended to meet is not confined to that branch of the law; and as, from all that has appeared up to this, the Hanafi form of the Muhammadan law is the only one to which Maimons would desire to be subject, it provides for the application to them only of that form of the law.

5. As it is obviously undesirable that any doubt should be thrown on the legal position of Maimons who may be already fully subject to the Muhammadan law, or that it should be suggested that a Maimon could not after the passing of the Bill become fully subject to that law in any way in which he, in common with Hindus and others, might become subject to it at present, a clause has been inserted in the Bill, providing that nothing therein contained shall prevent any person from being or becoming subject to any form of Muhammadan law in any other manner than that provided by the Bill.

AMÍR ALÍ.

*The 15th October, 1885.*

D. FITZPATRICK,  
*Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

(First publication.)

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 22nd October, 1885:—

No. 18 OF 1885.

THE INDIAN TRAMWAYS BILL,  
1885.

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41. Saving of power of local authority and police to regulate traffic on roads.

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## SECTIONS.

42. Promoters, lessees and licensees to be responsible for all injuries.  
 43. Want of funds not a sufficient reason for default.  
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 46. Extension of Act to existing tramways.  
 47. Meaning of "tramway" in Railway Act.  
 48. Powers of Local Government exercisable from time to time.

*A Bill to facilitate the construction and to regulate the working of Tramways.*

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

*Preliminary.*

Short title and commencement.

1. (1) This Act may be called the Indian Tramways Act, 1885; and

- (2) It shall come into force at once.

Local extent.

2. (1) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal;

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

[Act XIII, 1885, s. 3, clause (7).]

(1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

[Act XXII, 1883, s. 2.]

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway and drains of a road, and any bridge, culvert or causeway forming part of a road;

[RS & 34 Vic., c. 78, s. 3.]

(3) "road-authority", in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority;

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government;

(4) "circle", in relation to a local authority or road-authority, means the area within the control of that authority;

(5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway;

(6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order;

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved;

(8) "undertaking" includes all moveable and immovable property of the promoter suitable to and used by him for the purposes of the tramway;

(9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power;

(10) "toll" includes any charge leviable in respect of the use of a tramway;

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls;

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act;

(13) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(14) "prescribed" means prescribed by rules made by the Local Government under this Act.

*Orders authorising the Construction of Tramways.*

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on the application of—

Application for and consent necessary to making of order.

(a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or

(b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part;

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor-General in Council.

*The Indian Tramways Bill, 1885.—Sections 5-7.*

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

6. (1) The Local Government on receiving an application shall consider it and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to

sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

(d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

(e) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

(f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may require;

(g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway;

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes or water-pipes in or

[33 & 34 Vic., c. 78, s. 8 & 15; Provisional Order Clauses 2 and 5; and Report of House of Lords Committee, 1879, paragraph 11.]

[33 & 34 Vic., c. 78, s. 23 & 27, and Provisional Order Clause 9.]

[33 & 34 Vic., c. 78, s. 24.]

[33 & 34 Vic., c. 78, s. 9, and Provisional Order Clause 13.]

[33 & 34 Vic., c. 78, s. 25, and Provisional Order Clauses 8 and 10.]

[33 & 34 Vic., c. 78, s. 28, and Provisional Order Clauses 6, 11 & 12.]

[33 & 34 Vic., c. 78, s. 27, and Provisional Order Clause 17.]

[Provisional Order Clause 16.]

[33 & 34 Vic., c. 78, s. 32, and Provisional Order Clause 18.]

*The Indian Tramways Bill, 1885.—Sections 8-10.*

on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic.,  
c. 78, s. 30 &  
31.]

(k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes or water-pipes;

[Provisional  
Order Clause  
18.]

(l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

[33 & 34 Vic.,  
c. 78, s. 31; and  
Provisional  
Order Clauses  
25, 26 & 27.]

(m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

[33 & 34 Vic.,  
c. 78, s. 31;  
Schedule A to  
form of Provisional  
Order; and  
Regulations and By-  
laws of the  
Board of Trade  
with respect  
to the use of  
steam-power  
on tramways.]

(n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety and convenience of the public;

[33 & 34 Vic.,  
c. 78, s. 10, and  
Provisional  
Order Clauses  
33 to 36 and  
38 to 42.]

(o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

[Provisional  
Order Clause  
37.]

(p) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

[33 & 34 Vic.,  
c. 78, s. 41,  
and Provisional  
Order  
Clause 43.]

(q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

[33 & 34 Vic.,  
c. 78, s. 28,  
proviso.]

(r) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

[Provisional  
Order Clauses  
10, 11, 26, 27  
and 30.]

(s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

[Report  
of  
Lords  
Comm-  
ittee, 1879,  
para. 11.]

(8) The Local Government may, in providing for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired

for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

10. (1) If a promoter authorised by an order to construct a tramway—

(a) does not within the time specified in the order substantially commence the construction of the tramway, or

(b) having commenced the construction, suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless

*The Indian Tramways Bill, 1885.—Sections 11-17.*

the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

(ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;

(iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purpose of this section, be conclusive proof of the matter stated therein.

*Construction and Maintenance of Tramways.*

11. A tramway shall be constructed and maintained in the manner provided by the order.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

13. The road-authority and the promoter may from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

*Traffic on Tramways.*

14. (1) The promoter of a tramway shall, subject to the provisions of sub-section (2) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

(a) that this sub-section shall not apply where the tramway is constructed on land the

right to the exclusive possession of which has been acquired by the promoter, and

(b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determined under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry, or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

*Licenses to use Tramways.*

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

(a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;

(b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

Sections 10 & 11 of this Bill.

B. & 31  
c. 78, s. 15.]

B. & 31  
c. 78, s. 15.  
& Act IV,  
9, s. 5.]

B. & 34  
c. 78, s. 15.]

B. & 31  
c. 78, s. 15.  
& Act IV,  
9, s. 5.]

B. & 31  
c. 78, s. 15.  
& Act IV,  
9, s. 5.]

B. & 31  
c. 78, s. 15.  
& Act IV,  
9, s. 5.]

[33 & 34 Vic.  
c. 78, s. 45.]

[33 & 34 Vic.  
c. 78, s. 53;  
and Act XXXI  
1880, s. 19.]

[33 & 34 Vic.  
c. 78, s. 25.]

*The Indian Tramways Bill, 1885.—Sections 18-22*

(c) the licensee shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and

(e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

[33 & 34 Vic.,  
c. 78, s. 37.]

18. A licensee shall, on demand, give to the promoter or lessee an account of traffic in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

*Discontinuance of Tramways.*

[33 & 34 Vic.,  
c. 78, s. 41.]

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of  
this Bill.]

[33 & 34 Vic.,  
c. 78, s. 41.]

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such

[Section 28  
of this Bill.]

materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

*Insolvency of Promoter.*

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

(2) Where a notification has been published under sub-section (1), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

*Purchase of Tramways.*

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(a) within such limits of time as may be specified in this behalf in the order, or

(b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been

*The Indian Tramways Bill, 1885.—Sections 23-25.*

approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

*Working of Tramways owned by Local Authorities.*

23. (1) When a local authority has under the lease of, or working of, tramway by local authority, completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

*Rules.*

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

(a) as to the form in which an application for an order shall be made;

(b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;

(c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order

is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;

(d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;

(e) for regulating the use of steam-power or any other mechanical power on a tramway;

(f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (j) and (k), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;

(g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,

(h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for the purpose of carrying this Act into execution.

(2) A local authority may, from time to time, with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

(a) the rate of speed to be observed in travelling upon a tramway within the circle of the Local authority;

(b) the use of animal power on the tramway;

(c) the distances at which carriages using the tramway shall be allowed to follow one after the other;

(d) the stopping of carriages using the tramway;

(e) the traffic on roads along or across which the tramway is laid;

(f) the number of passengers which may be carried in any carriage;

(g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,

(h) generally, the mode of use of the tramway.

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

(a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and

(b) for regulating the travelling in any carriage belonging to him.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

(a) if the authority making the rule is the Local Government, to two hundred rupees, and

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

[33 & 34 Vic., c. 78, s. 48.]

[Act XXII, 1883, s. 20.]

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

[33 & 34 Vic., c. 78, s. 47.]

[Act XXII, 1883, s. 14.]

*The Indian Tramways Bill, 1885.—Sections 26-31.*

[Act XXII,  
1883, s. 20,  
sub-section  
(8).]

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees; and, when the breach is a continuing breach, with a further fine which may extend—

[Act XXII,  
1883, s. 14.]

(c) if the authority making the rule is the Local Government, to fifty rupees, and

[33 & 34 Vic.  
c. 78, s. 47.]

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

**26. (1)** Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under section 24.

*Offences.*

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

**27. If a promoter—**

(a) constructs or maintains a tramway otherwise than in accordance with the order;

[Act XXII,  
1883, s. 11.]

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

**28. If any person, without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.**

**29. If any person, without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—**

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(c) does anything in such a manner as to obstruct any carriage using any such tramway; or

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b) or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

**30. If any person, except under a lease from, or by agreement with, the promoter, or under license granted under this Act, uses on a tramway, otherwise than as permitted by section 12, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.**

**31. (1) If any person travelling or having travelled in a carriage of the promoter, or lessee or licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.**

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

(3) When the person is taken to the police-station, he shall with the least possible delay be forwarded to the nearest Magistrate unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

*The Indian Tramways Bill, 1885.—Sections 32-39.*

**32.** If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

**33. (1)** If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

**(2)** The fine shall be in addition to any tolls payable by the licensee to the promotor or lessee in respect of the passengers or goods conveyed by the carriages or carriages used by the licensee on the tramway.

**34.** Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

*Settlement of Differences.*

**35. (1)** If any difference arises between the promotor or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promotor or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

**(2)** Where the difference is between the promotor or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

**(3)** In other cases, the referee shall be appointed by the Local Government.

**(4)** The powers and procedure of the referee may be prescribed.

**(5)** The decision of the referee shall be binding and conclusive on both parties.

*Recovery of Tolls.*

**36.** Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promotor or lessee under an order, any sum payable by a promotor or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promotor, and the cost incurred by a road-authority in removing a tramway and re-instating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promotor or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promotor or lessee or his surety in execution of any process issued by the Collector.

**37. (1)** If a licensee fails to pay on demand the tolls due for the use of a tramway, the promotor or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

**(2)** When a licensee has failed to pay on demand the tolls due from him, the promotor or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

**(3)** When application is made to a Magistrate, under sub-section (1), he may make an interim order of distraint pending his final decision.

**38.** Any toll due to a promotor, lessee or licensee from a passenger may be recovered either by suit, or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

*Savings.*

**39. (1)** Notwithstanding anything contained in this Act or in an order, a promotor shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promotor of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

**(2)** The Local Government may, if it thinks fit, fix rates at which a promotor, lessee or licensee

*The Indian Tramways Bill, 1885.—Sections 40-48.*

may compound for the charges payable in respect of the use of a road or bridge.

[33 & 34 Vic.,  
c. 78, s. 33  
& 80.]

40. (1) Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railway or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

[33 & 34 Vic.,  
c. 78, s. 61;  
and Act XXII,  
1883, s. 10.]

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

*Supplemental Provisions.*

[33 & 34 Vic.,  
c. 78, s. 40 &  
55.]

42. A promoter, lessee or licensee shall be answerable, for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[Act XXII,  
1885, s. 21.]

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction,

or the discontinuance of the working, of a tramway by a promoter or lessee.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

46. The Local Government may, with the consent of the local authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

**STATEMENT OF OBJECTS AND REASONS.**

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1838 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the

application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section (4)). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of funds is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section (2)), or it may be purchased by the local authority (section 22).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 41 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

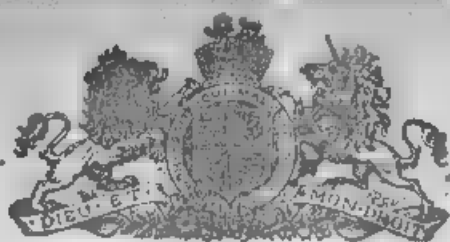
12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

*The 22nd October, 1885.*

C. P. ILBERT.

D. FITZPATRICK,

*Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, NOVEMBER 7, 1885.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885:—

No. 17 of 1885.

*A Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law.*

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Maimons, and questions have from time to time arisen in the case of some of those persons as to the law by which in certain particulars they are governed, and whereas some of those persons consider that they are governed or desire to be governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient that a procedure should be provided whereby the applicability of that law to them in those particulars could be placed beyond dispute;

It is hereby enacted as follows:—

1. This Act may be called the Maimons Act, 1885.
2. (1) When any Maimon who has attained his majority has declared in manner next hereinafter provided that he desires to be governed by the Muhammadan law as established in the Hanafi School, that law shall thereafter, notwithstanding any custom to the contrary, apply to him in each part of British India in the same particulars and to the same extent as it applies to other persons in that part of British India who are governed by it.

(2) A declaration to take effect under sub-section (1) must be made by a written instrument under the hand of the person making the same, in the form given in the schedule to this Act or in a form to the like effect, and must—

- (a) if made in a part of British India in which the Indian Registration Act, 1877, is for the time being in force, be registered during his lifetime under that Act; and
- (b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

(3) Nothing in this Act shall prevent any person being or becoming subject to any form of Muhammadan law in any other manner than that provided by this Act.

### THE SCHEDULE.

#### FORM OF DECLARATION.

I hereby declare that I wish to be governed to the extent provided by the Maimons Act, 1885, by the Muhammadan law as established in the Hanafi School.

### STATEMENT OF OBJECTS AND REASONS.

1. The Maimons, like the Khojās, were originally Hindus, and have been converted to Muhammadanism, but though they are said, as a rule, to be Muhammadans in a fuller sense than the great body of the Khojās, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu customs instead of by Muhammadan law.

2. From a petition lately received by the Government, it appears that to a large number of the Maimons in question this position is not satisfactory. They hold that they should be governed, or they wish to be governed, by the Muhammadan law of the Hanafi School, and they ask that it may be declared by the legislature that they are so governed.

3. It is not to be expected that any such declaration would be made by the legislature unless it were shown that it was desired by the entire community to which it would apply, and it must be admitted that there is a want of unanimity among them on this subject.

It seems but reasonable, however, that some simple procedure should be provided by which the petitioners and other members of the Maimon class, who may be of their way of thinking, would be enabled to secure the application to themselves of those portions of the Muhammadan law which are applied by our Courts to ordinary Muhammadans, and to avoid all risk of being held to be governed by customs which are distasteful to them, and which it is to be apprehended are far from being well settled.

4. Such a procedure is to be found in the clause which it has been proposed to insert in the Khojā Succession Bill now under consideration, and which provides that a Khojā of full age may by a registered declaration withdraw himself from the peculiar law of succession by which Khojās are to be governed and place himself under the Muhammadan law of succession.

The present Bill has been prepared with a view to providing a similar procedure for Maimons. It is, however, not restricted to the matter of succession, as the difficulty which it is intended to meet is not confined to that branch of the law; and as, from all that has appeared up to this, the Hanafi form of the Muhammadan law is the only one to which Maimons would desire to be subject, it provides for the application to them only of that form of the law.

5. As it is obviously undesirable that any doubt should be thrown on the legal position of Maimons who may be already fully subject to the Muhammadan law, or that it should be suggested that a Maimon could not after the passing of the Bill become fully subject to that law in any way in which he, in common with Hindus and others, might become subject to it at present, a clause has been inserted in the Bill, providing that nothing therein contained shall prevent any person from being or becoming subject to any form of Muhammadan law in any other manner than that provided by the Bill.

AMIR ALI.

*The 15th October, 1885.*

D. FITZPATRICK,  
*Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[ Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 22nd October, 1885:—

No. 18 of 1885.

THE INDIAN TRAMWAYS BILL,  
1885.

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3. Definitions.

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6. Procedure for making order.
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9. Power to authorise joint work by local authorities.
10. Cesser of powers given by an order.

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14. Rights of promoters and the public over tramways.
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21. Proceedings in case of insolvency of promoter.

*Purchase of Tramways.*

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31. Penalty for evading payment of proper toll.
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37. Recovery of tolls from licensees.
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39. Promoter to have right of user only.
40. Saving of power over roads traversed by tramways.
41. Saving of power of local authority and police to regulate traffic on roads.

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## SECTIONS.—

42. Promoters, lessees and licensees to be responsible for all injuries.  
 43. Want of funds not a sufficient reason for default.  
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 45. Application by local authorities of local funds to tramways.  
 46. Extension of Act to existing tramways.  
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 48. Powers of Local Government exercisable from time to time.

*A Bill to facilitate the construction and to regulate the working of Tramways.*

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

*Preliminary.*

Short title and commencement.

1. (1) This Act may be called the Indian Tramways Act, 1885; and

(2) It shall come into force at once.

Local extent.

2. (1) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway and drains of a road, and any bridge, culvert or causeway forming part of a road:

[38 & 34 Vic., c. 78, s. 2.]

(3) "road-authority", in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority:

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

(4) "circle", in relation to a local authority or road-authority, means the area within the control of that authority:

(5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway:

(6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved:

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(10) "toll" includes any charge leviable in respect of the use of a tramway:

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls:

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(14) "prescribed" means prescribed by rules made by the Local Government under this Act.

*Orders authorising the Construction of Tramways.*

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on the application of—

(a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or

(b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor-General in Council.

*The Indian Tramways Bill, 1885.—Sections 5-7.*

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

[33 & 34 Vic.,  
c. 78, s. 25.]

5. When it is proposed to lay a tramway in a circle, or two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

[33 & 34 Vic.,  
c. 78, s. 7 &  
Act XV,  
1879, s. 18.]

6. (1) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the order has been made as required by this section.

[33 & 34 Vic.,  
c. 78, s. 10.]

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be completed and the time within which it shall be opened for public traffic.

[33 & 34 Vic.,  
c. 78, s. 10.]

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

[33 & 34 Vic.,  
c. 78, s. 10.]

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to

sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

[33 & 34 Vic.,  
c. 78, s. 8 &  
15; Provisional  
Order Clause  
2 and 5; and Report of  
House of Lords  
Committee,  
1879, para-  
graph 41.]

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the re-laying of the roads, and the approval of the method and materials by the Local Government or the local authority before the commencement of the work;

[33 & 34 Vic.,  
c. 78, s. 26 &  
27, and Provisional  
Order Clause 9.]

(d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriage-way over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

[33 & 34 Vic.,  
c. 78, s. 26.]

(e) the space which shall ordinarily intervene between the outside of the carriage-way on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

[33 & 34 Vic.,  
c. 78, s. 26, and  
Provisional  
Order Clause  
13.]

(f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may require;

[33 & 34 Vic.,  
c. 78, s. 26,  
and Provisional  
Order Clause 8 and  
10.]

(g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

[33 & 34 Vic.,  
c. 78, s. 26, and  
Provisional  
Order Clause  
8, 11 & 12.]

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway;

[33 & 34 Vic.,  
c. 78, s. 27, and Provisional  
Order Clause 17.]

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

[Provisional  
Order Clause  
15.]

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes or water-pipes in or

[33 & 34 Vic.,  
c. 78, s. 31, and Provisional  
Order Clause 16.]

*The Indian Tramways Bill, 1885.—Sections 8-10.*

off land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof:

[33 & 34 Vic.,  
c. 78, ss. 30 &  
31.]

[Provisional  
Order Clause  
16.]

[33 & 34 Vic.,  
c. 78, s. 34; and  
Provisional  
Order Clauses  
25, 26 & 27.]

[33 & 34 Vic.,  
c. 78, s. 34;  
Schedule A (in  
form of Provisional  
Order; and Regulations  
and By-laws of the  
Board of Trade  
with respect  
to the use of  
steam-power  
on tramways.)]

[33 & 34 Vic.,  
c. 78, s. 19, and  
Provisional  
Order Clauses  
33 to 35 and  
38 to 43.]

[Provisional  
Order Clause  
37.]

[33 & 34 Vic.,  
c. 78, s. 41,  
and Provisional  
Order  
Clause 48.]

[33 & 34 Vic.,  
c. 78, s. 26,  
proviso.]

[Provisional  
Order Clauses  
10, 11, 26, 27  
and 40.]

[Report of  
the  
Joint  
Committee,  
1879,  
para. 11.]

(b) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes or water-pipes;

(c) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

(d) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

(e) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety and convenience of the public;

(f) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

(g) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

(h) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

(i) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

(j) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

(3) The Local Government may, in providing for the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired

by the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

(1) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking (the authorised) tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

10. (1) If a promoter authorised by an order to construct a tramway—

(a) does not within the time specified in the order substantially commence the construction of the tramway, or

(b) having commenced the construction, suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless

*The Indian Tramways Bill, 1885.—Sections 11-17.*

the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

(ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;

(iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

*Construction and Maintenance of Tramways.*

11. A tramway shall be constructed and maintained in the manner provided by the order.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

13. The road-authority and the promoter may from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

*Traffic on Tramways.*

14. (1) The promoter of a tramway shall, subject to the provisions of sub-section (2), and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway.

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

(a) that this sub-section shall not apply where the tramway is constructed on land the

right to the exclusive possession of which has been acquired by the promoter; and

(b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in a certificate issued under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry, or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

*Licenses to use Tramways.*

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

(a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;

(b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

*The Indian Tramways Bill, 1885.—Sections 18-22*

(c) the licensee shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and

(e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

[33 & 34 Vic.  
c. 78, s. 37.]

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

*Discontinuance of Tramways.*

[33 & 34 Vic.  
c. 78, s. 41.]

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of  
this Bill.]

[33 & 34 Vic.  
c. 78, s. 41.]

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such

[Section 36  
of this Bill.]

materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

*Insolvency of Promoter.*

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end, and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22  
of this Bill.]

(2) Where a notification has been published under sub-section (1), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

*Purchase of Tramways.*

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(a) within such limits of time as may be specified in this behalf in the order, or

(b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been

*The Indian Tramways Bill, 1885.—Sections 23-25.*

approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

*Working of Tramways owned by Local Authorities.*

23. (1) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

*Rules.*

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

(a) as to the form in which an application for an order shall be made;

(b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;

(c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order

is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;

(d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;

(e) for regulating the use of steam power or any other mechanical power on a tramway;

(f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (f) and (g), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;

(g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,

(h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for the purpose of carrying this Act into execution.

(2) A local authority may, from time to time, with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

(a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;

(b) the use of animal power on the tramway;

(c) the distances at which carriages using the tramway shall be allowed to follow one after the other;

(d) the stopping of carriages using the tramway;

(e) the traffic on roads along or across which the tramway is laid;

(f) the number of passengers which may be carried in any carriage;

(g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,

(h) generally, the mode of use of the tramway.

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

(a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and

(b) for regulating the travelling in any carriage belonging to him.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

(a) if the authority making the rule is the Local Government, to two hundred rupees, and

1884 Vic.  
c. 19.]

1883 & 34  
Vic., c. 78, s. 26; and Act  
XXII, 1883, s. 20.]

1883 & 34  
Vic., c. 78, s. 26; and Act  
XXII, 1883, s. 20.]

Act XXII,  
1883, s. 20.]

1883 & 34 Vic.  
c. 78, s. 26; and Act  
XXII, 1883, s. 20.]

1884 Vic.  
c. 40 &  
Act  
XXII, 1883, s. 20.]

1883 & 34 Vic.  
c. 78, s. 26.]

Act XXII,  
1883, s. 14.]

*The Indian Tramways Bill, 1885.—Sections 26-31.*

[Act XXII,  
1883, s. 20,  
sub-section  
(2).]

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees; and, when the breach is a continuing breach, with a further fine which may extend—

[Act XXII,  
1883, s. 14.]

(c) if the authority making the rule is the Local Government, to fifty rupees, and

[33 & 34 Vic.,  
s. 78, s. 47.]

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

26. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under section 24.

*Offences.*

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order;

[Act XXII,  
1883, s. 14.]

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order:—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected, thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(c) does anything in such a manner as to obstruct any carriage using any such tramway; or

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b) or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

(3) When the person is taken to the police-station, he shall with the least possible delay be forwarded to the nearest Magistrate unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

*The Indian Tramways Bill, 1885.—Sections 32-39.*

**32.** If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

**33. (1)** If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

**(2)** The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

**34.** Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

*Settlement of Differences.*

**35. (1)** If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

**(2)** Where the difference is between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

**(3)** In other cases, the referee shall be appointed by the Local Government.

**(4)** The powers and procedure of the referee may be prescribed.

**(5)** The decision of the referee shall be binding and conclusive on both parties.

*Recovery of Tolls.*

**36.** Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and re-instating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

**37. (1)** If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

**(2)** When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

**(3)** When application is made to a Magistrate under sub-section (1), he may make an interim order of distraint pending his final decision.

**38.** Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

*Savings.*

**39. (1)** Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

**(2)** The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee

*The Indian Tramways Bill, 1885.—Sections 40-48.*

may compound for the charges payable in respect of the use of a road or bridge.

[33 & 34 Vic.,  
c. 78, ss. 22  
& 30.]

**40. (1)** Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

[33 & 34 Vic.,  
c. 78, s. 31;  
and Act XXII,  
1882, s. 10.]

**41.** Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

*Supplemental Provisions.*

[33 & 34 Vic.,  
c. 78, ss. 40 &  
55.]

**42.** A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[Act XXII,  
1883, s. 21.]

**43.** For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction,

or the discontinuance of the working, of a tramway by a promoter or lessee.

**44.** When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depots of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

**45.** The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

**46.** The Local Government may, with the consent of the local authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

**47.** In section 54 of the Indian Railway Act, IV of 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

**48.** All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

**STATEMENT OF OBJECTS AND REASONS.**

The introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1853 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sinton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions, on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the

application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section (4)). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of funds is unable to maintain the tramway or work it with advantage to the public (section 20), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section (2)), or it may be purchased by the local authority (section 22).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

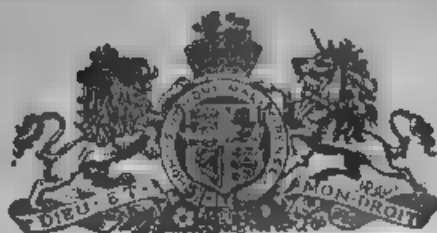
12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

*The 22nd October, 1885.*

C. P. ILBERT.

D. FITZPATRICK,

*Secy. to the Govt. of India*



# The Gazette of India

PUBLISHED BY AUTHORITY

CALCUTTA, SATURDAY, NOVEMBER 14, 1885.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 22nd October, 1885:—

No. 18 of 1885.

#### THE INDIAN TRAMWAYS BILL, 1885.

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 46. Extension of Act to existing tramways.  
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*A Bill to facilitate the construction and to regulate the working of Tramways.*

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

*Preliminary.*

Short title and commencement.

1. (1) This Act may be called the Indian Tramways Act, 1885; and

- (2) It shall come into force at once.

Local extent.

2. (1) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

- (2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

3. In this Act, unless there is something repugnant in the subject or context,—

*Definitions.*

- (1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

- (2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway and drains of a road, and any bridge, culvert or causeway forming part of a road;

- (3) "road-authority", in relation to a road, means—

- (a) if a local authority maintains and repairs the road, then that authority;  
 (b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and  
 (c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government;

- (4) "circle", in relation to a local authority or road-authority, means the area within the control of that authority;

- (5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway;

- (6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order;

- (7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved.

- (8) "undertaking" includes all moveable and immovable property of the promoter suitable to and used by him for the purposes of the tramway;

- (9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power;

- (10) "toll" includes any charge leviable in respect of the use of a tramway;

- (11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls;

- (12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act;

- (13) "Collector" means the chief officer in charge of the revenue administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

- (14) "prescribed" means prescribed by rules made by the Local Government under this Act.

*Orders authorising the Construction of Tramways.*

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on the application of—

- (a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or  
 (b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part;

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor General in Council.

[Act XIII, 1885, s. 3, clause (7).]

[Act XXII, 1885, s. 2.]

[83 & 34 Vic., c. 78, s. 3.]

[83 & 34 Vic., c. 78, s. 3.]

[Act XIII, 1885, s. 3.]

[83 & 34 Vic., c. 78, s. 3.]

*The Indian Tramways Bill, 1885.—Sections 5-7.*

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

34 Vic.  
[a 6.] 5. When it is proposed to lay a tramway in Consent of local or two or more circles, and road authority not necessary in certain cases. a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

34 Vic.  
[a 7 & Act XV, a 68.] 6. (1) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the order has been made as required by this section.

78. a1  
& 34  
78. a.  
a. 10  
Bill.] 7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

34 Vic.  
[a 3.] (a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to

sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes; [33 & 34 Vic. c. 78, ss. 15; Provisional Order Clauses 2 and 5; and Report of House of Lords Committee, 1879, paragraph 11.]

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the re-instating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work; [33 & 34 Vic. c. 78, ss. 26, 27, and Provisional Order Clause 9.]

(d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level; [33 & 34 Vic. c. 78, s. 26.]

(e) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted; [33 & 34 Vic. c. 78, s. 26, and Provisional Order Clause 13.]

(f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the substructure upon which they rest, as the Local Government may require; [33 & 34 Vic. c. 78, s. 25, and Provisional Order Clauses 8 and 10.]

(g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads; [33 & 34 Vic. c. 78, s. 24, and Provisional Order Clauses 8, 11 & 12.]

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway; [33 & 34 Vic. c. 78, s. 27, and Provisional Order Clause 17.]

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway; [Provisional Order Clause 15.]

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes or water-pipes in [33 & 34 Vic. c. 78, s. 32, and Provisional Order Clause 18.]

*The Indian Tramways Bill, 1885.—Sections 8-10.*

or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic., c. 78, ss. 30 & 31.]

[Provisional Order Clause 16.]

[33 & 34 Vic., c. 78, s. 34; and Provisional Order Clauses 25, 26 & 27.]

[33 & 34 Vic., c. 78, s. 34; Schedule A to form of Provisional Order; and Regulations and By-laws of the Board of Trade with respect to the use of steam-power on tramways.]

[33 & 34 Vic., c. 78, s. 10, and Provisional Order Clauses 32 to 36 and 38 to 43.]

[Provisional Order Clause 37.]

[33 & 34 Vic., c. 78, s. 44, and Provisional Order Clause 48.]

[33 & 34 Vic., c. 78, s. 23, proviso.]

[Provisional Order Clauses 10, 11, 26, 27 and 40.]

[Report of House of Lords Committee, 1879, para. 11.]

(f) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes or water-pipes;

(g) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

(h) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

(i) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus as the Local Government may consider necessary or desirable for the safety and convenience of the public;

(j) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

(k) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

(l) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

(m) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

(n) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired

for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order except that no addition to or modification of the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

10. (1) If a promoter, authorised by an order to construct a tramway—

(a) does not within the time specified in the order substantially commence the construction of the tramway, or

(b) having commenced the construction, suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless

*The Indian Tramways Bill, 1885.—Sections 11-17.*

the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

- (ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;
- (iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

*Construction and Maintenance of Tramways.*

11. A tramway shall be constructed and maintained in the manner provided by the order.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

13. The road-authority and the promoter may from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expenses of keeping the road or part in repair.

*Traffic on Tramways.*

14. (1) The promoter of a tramway shall, subject to the provisions of sub-section (2) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

- (a) that this sub-section shall not apply where the tramway is constructed on land the

right to the exclusive possession of which has been acquired by the promoter, and

(b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry, or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

*Licenses to use Tramways.*

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

- (a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;
- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

*The Indian Tramways Bill, 1885.—Sections 18-22.*

(c) the licensee shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon such carriage of the licensee run upon the tramway for the whole or any part of a journey; and

(e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

[33 & 34 Vic.,  
c. 78, s. 27.]

18. A licensee shall, on demand, give to an officer or servant authorised by the promoter or lessee an account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

*Discontinuance of Tramways.*

[33 & 34 Vic.,  
c. 78, s. 41.]

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of  
this Bill.]

[33 & 34 Vic.,  
c. 78, s. 41.]

20. (1) Where a notification has been published under section 19, the road-authority on ceasing of powers of promoter, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous

notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

*Insolvency of Promoter.*

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22  
this Bill.]

(2) Where a notification has been published under sub-section (1), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

*Purchase of Tramways.*

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(a) within such limits of time as may be specified in this behalf in the order, or

(b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, required the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been

[Section 28  
this Bill.]

*The Indian Tramways Bill, 1885.—Sections 23-25.*

approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

*Working of Tramways owned by Local authorities.*

**23. (1)** When a local authority has under the lease of, or working of, tramway by local authority, completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

*Rules.*

**24. (1)** In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

- (a) as to the form in which an application for an order shall be made;
- (b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;
- (c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order

is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities.

- (d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;
- (e) for regulating the use of steam-power or any other mechanical power on a tramway;
- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (f) and (h), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;
- (g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and
- (h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for the purpose of carrying this Act into execution.

(2) A local authority may, from time to time, with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

- (a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;
- (b) the use of animal power on the tramway;
- (c) the distances at which carriages using the tramway shall be allowed to follow one after the other;
- (d) the stopping of carriages using the tramway;
- (e) the traffic on roads along or across which the tramway is laid;
- (f) the number of passengers which may be carried in any carriage;
- (g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and
- (h) generally, the mode of use of the tramway.

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

- (a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and
- (b) for regulating the travelling in any carriage belonging to him.

**25.** The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

- (a) if the authority making the rule is the Local Government, to two hundred rupees, and

*The Indian Tramways Bill, 1885.—Sections 26-31.*

Act XXII,  
1883, s. 20,  
sub-section  
(7).]

Act XXII,  
1883, s. 14.]

Act & 34 Vic.,  
78, s. 47.]

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees; and, when the breach is a continuing breach, with a further fine which may extend—

(c) if the authority making the rule is the Local Government, to fifty rupees, and

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

26. (1) Every authority having power to make rules under any section of this act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under section 24.

*Offences.*

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

## 27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order;

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

or if a promoter, lessee, or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Jurisdiction), on the complaint of the Local Government or of the local authority or road authority or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(c) does anything in such a manner as to obstruct any carriage using any such tramway; or

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b) or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Jurisdiction) be punished with fine which may extend to one hundred rupees.

30. If any person, except under a lease from, or by agreement with, the promoter, or under licence from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

(3) When the person is taken to the police-station, he shall with the least possible delay be forwarded to the nearest Magistrate unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

*The Indian Tramways Bill, 1885.—Sections 32-39.*

34 Vic.  
a. 58.  
Act XIII.  
s. 17.] **32.** If any person takes, or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

34 Vic.  
a. 58.] **33.** (1) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

XIII.  
a. 58.] **34.** Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

*Settlement of Differences.*

34 Vic.  
a. 58.] **35.** (1) If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

(2) Where the difference is between the promoter or lessee on the one hand and the Local Government either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases, the referee shall be appointed by the Local Government.

(4) The powers and procedure of the referee may be prescribed.

(5) The decision of the referee shall be binding and conclusive on both parties.

*Recovery of Tolls.*

**36.** Any of the following moneys, namely, any rent due to a local authority or from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and re-instating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

**37.** (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section (1), he may make an interim order of distrainment pending his final decision.

**38.** Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

*Savings.*

**39.** (1) Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

(2) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee

*The Indian Tramways Bill, 1885.—Sections 40-48.*

may compound for the charges payable in respect of the use of a road or bridge.

[33 & 34 Vic.,  
c. 78, s. 32  
& 40.]

40 (1) Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in subsection (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

[33 & 34 Vic.,  
c. 78, s. 61,  
and Act XXII,  
1883, s. 10.]

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

*Supplemental provisions.*

[33 & 34 Vic.,  
c. 78, ss. 40 &  
66.]

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[Act XXII,  
1883, s. 21.]

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for suspension of the construction,

or the discontinuance of the working, of a tramway by a promoter or lessee.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

46. The Local Government may, with the consent of the local authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" in Railway Act shall have the meaning assigned to it by section 3 of this Act.

48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

**STATEMENT OF OBJECTS AND REASONS.**

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1883 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the

application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section (4)). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of fund is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section (2)), or it may be purchased by the local authority (section 22).

7. Section 23 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

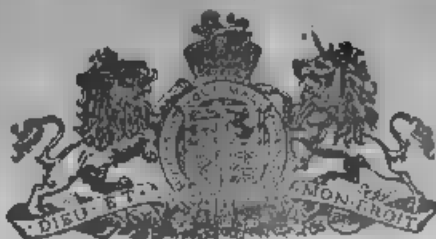
12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

*The 22nd October, 1885.*

C. P. ILBERT.

D. FITZPATRICK,

*Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 19, 1885.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th December 1885:—

No. 19 of 1885.

#### THE PROVINCIAL SMALL CAUSE COURTS BILL, 1885.

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##### FIRST SCHEDULE.—ENACTMENTS REPEALED.

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*The Provincial Small Cause Courts Bill, 1885.**(Chapter II.—Constitution of Courts of Small Causes.—Sections 1-8.)*

*A Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. (1) This Act may be called the Provincial Small Cause Courts Act, 1886.

(2) It extends to the whole of British India except the scheduled districts as defined in the Scheduled Districts Act, 1874; and

(3) It shall come into force on the first day of July, 1886.

2. (1) The enactments specified in the first schedule to this Act are repealed to the extent mentioned therein.

(2) But all Courts constituted, limits fixed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act XI of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall, so far as may be, be deemed to have been respectively constituted, fixed, made, conferred, prescribed, given and published under this Act.

(3) Any enactment or document referring to the said Act XI of 1865 shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Saving of procedure and jurisdiction in certain cases.

3. Nothing in this Act affects—

(a) any proceedings prior to decree in any suit instituted before the day on which this Act comes into force or any proceedings after decree which were commenced before and were pending on that day;

(b) the provisions of the Army Act, 1881, section 151; or

(c) the jurisdiction of a Cantonment Joint Magistrate invested with civil jurisdiction under Act III of 1869, or of a Magistrate

having jurisdiction under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) "Court of Small Causes" means a Court of Small Causes constituted under this Act;

(2) "District Court" means a principal Civil Court of original jurisdiction;

(3) "district" means the local limits of the jurisdiction of a District Court;

(4) "value", used with reference to a suit, means the amount or value of the subject-matter of the suit; and

(5) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

## CHAPTER II.

## CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration.

(2) The local limits of the jurisdiction of the Court shall be such as the Local Government may define.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

7. (1) A Judge who is the Judge of two or more such Courts may fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court directs.

8. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes.

(2) The Additional Judge shall discharge such of the functions of the Judge as the Judge directs.

XIV of 1874.

[Act XIV, 1882, s. 2.]

[44 & 45 Vic., c. 58.]  
[Act XV, 1882, s. 1, and Act XI, 1865, s. 46.]  
[Act XI, 1865, s. 12, and Act IX, 1860.]

[New Mad. IV and of 1881]

[Act XI, 1865, s. 11]

[Act XI, 1865, s. 12]

[Act II, 1865, s. 14]

[Act XI, 1865, s. 15, and Act XV, 1882, s. 94.]

[Act VI, s. 7.]

*The Provincial Small Cause Courts Bill, 1885.**(Chapter II.—Constitution of Courts of Small Causes.—Sections 9-16.)*

117. (3) The Judge may withdraw from the Additional Judge any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

1885. 9. The Local Government may, by order in writing, direct that two Judges to sit as a Court of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such suits cognizable by a Court of Small Causes as may be described in the order.

1885. 10. (1) Where two Judges, or a Judge and an Additional Judge, sitting together under section 9, are of the same opinion as to a decree or order to be made, the decree or order shall follow their opinion.

(2) If they differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of the Code of Civil Procedure applicable to a reference to the High Court shall apply.

(3) If they differ on any matter other than a matter specified in sub-section (2), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

111. (4) For the purposes of sub-section (3), a Judge permanently appointed shall be deemed senior to an officiating Judge.

1885. 11. (1) The Judge of a Court of Small Causes shall, if the Local Government directs, appoint an Registrar.

(2) The appointment shall be subject to the sanction of the Local Government.

(3) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(4) The Local Government may, by order in writing, confer upon the Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(5) The Registrar shall exercise the jurisdiction subject to the general control of the Judge.

1885. 12. (1) Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint an officer to be called the Clerk of the Court.

(2) A Registrar of a Court of Small Causes may also be the Clerk of the Court.

13. Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint as many other ministerial officers as may be necessary.

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed.

15. (1) A Judge, Additional Judge or Registrar of a Court of Small Causes may be suspended or removed from office by the Local Government.

(2) The Judge of a Court of Small Causes may suspend the Registrar of his Court if there appears to him to be urgent necessity for so doing, and may suspend or remove from office, or fine in an amount not exceeding one month's salary, any other ministerial officer of his Court who is guilty of misconduct or neglect in the performance of his duties.

(3) A fine imposed under sub-section (2) may, if the order imposing it so directs, be recovered by deduction of the amount thereof from any salary which may be or become due to the officer fined.

16. (1) A Judge, Additional Judge or ministerial officer appointed under this Act shall not, during his tenure of office, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, vakil, attorney, pleader or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

(2) If a Judge, Additional Judge or ministerial officer aforesaid practises, acts or is concerned in any trade or profession, in contravention of the provisions of sub-section (1), he shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

(3) Nothing in this section shall be deemed to prohibit a Judge, Additional Judge or ministerial officer from being a member of an incorporated or registered company.

*The Provincial Small Cause Courts Bill, 1885.**(Chapter IV.—Practice and Procedure of Courts of Small Causes.—Sections 17-24.)*

## CHAPTER III.

## JURISDICTION OF COURTS OF SMALL CAUSES.

17. (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule to this Act.

[Act XV,  
1882, ss. 18  
and 19.]

(2) Subject to the exceptions specified in the said schedule, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

[Act XI,  
1866, s. 7.]

(3) Subject to the exceptions aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

[Act XI, 1865,  
s. 12.  
Act XVII,  
1879, s. 6.]

18. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes.

## CHAPTER IV.

## PRACTICE AND PROCEDURE OF COURTS OF SMALL CAUSES.

[Act XIV,  
1882, s. 5.]  
XIV of  
1882.

19. The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second schedule annexed to the said Code, as amended by this Act, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it:

Provided that—

[Act XI,  
1865, s. 31.]

(a) where the applicant for a review of judgment was the defendant or one of the defendants, the Court shall not grant his application unless, at the time of presenting the application, he deposits in the Court the amount due from him under the decree or order; and

[cf. Act  
XIV, 1882,  
ss. 86 and  
87.]

(b) where a person to be arrested or property to be attached under section 84 of the said Code resides or is situate within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as

the case may be; and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

20. Except in a case of set-off, a written statement shall not be received unless required by the Court.

[Act XI,  
1865, s. 18.]

21. If it appears to a Court of Small Causes that a judgment-debtor under its decree has not, within the local limits of the jurisdiction of the Court, moveable property sufficient to satisfy the decree, it may, on the application of the decreeholder, send the decree for execution to another Court in the manner provided by the Code of Civil Procedure, sections 223 and 224.

[Act XI,  
1865, s. 19.]

XIV of  
1882.

22. Suits cognizable by the Registrar under section 11, sub-section (4), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively:

[Act XI,  
1865, s. 41.]

Provided that the Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

23. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may return or reject a plaint for any reason for which the Judge might return or reject it.

[Act XI,  
1865, s. 37.]

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him:

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, his application shall be made at the first sitting of the Court after the day on which the Registrar admitted, or returned or rejected, the plaint.

24. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

[Act XI,  
1865, s. 42.]

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment and re-hear the suit, on the same conditions, on the

*The Provincial Small Cause Courts Bill, 1885.**(Chapter V.—Supplemental Provisions.—Sections 25-34.)*

same grounds and in the same manner as if the decree had been passed by himself.

25. (f) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar shall receive applications for the execution of decrees and orders made by the Court of which he is Registrar or sent to that Court for execution, and may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of the applications which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (f), and the Additional Judge, in the case of any such decree or order made by himself, may, within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order, either of his own motion or on the application of a party.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877.

26. The Clerk of the Court shall, subject to the orders of the Judge, and of the Registrar if a Registrar has been appointed, receive plaints and applications, issue summonses and notices, and, unless the High Court has ordered otherwise, take charge and keep an account of all moneys and securities for money paid or delivered into or out of Court.

27. Save as in this Act expressly provided, a decree or order made under the foregoing provisions of this Act shall be final.

## CHAPTER V.

## SUPPLEMENTAL PROVISIONS.

28. The Local Government may fix the place or places, within the local limits of the jurisdiction of a Court of Small Causes, at which the jurisdiction shall be exercised.

29. A Court of Small Causes shall be subject to the control of the District Court and to the superintendence of the High Court, and shall—

- (a) keep such registers, books and accounts as the High Court prescribes; and
- (b) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for re-

cords, returns and statements in such form and manner as the authority making the requisition directs.

30. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

31. The Local Government may, by order in writing, abolish a Court of Small Causes.

32. (1) Nothing in this Act shall prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court subordinate to a District Court, or to be a Magistrate of any class.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to such rules as the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of his duties as the Judge of the other Civil Court or as a Magistrate.

33. (1) So much of Chapters III and IV of this Act as relates to the nature of the suits cognizable by Courts of Small Causes, to the exclusion of the jurisdiction of other Courts in those suits, to the powers and procedure of Courts of Small Causes, and to the finality of the decrees and orders of those Courts, applies to Courts invested under any enactment for the time being in force with the jurisdiction of a Court of Small Causes when the Courts are exercising that jurisdiction.

(2) A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

34. In the third division of the second schedule to the Indian Limitation Act, 1877,—  
(a) before No. 158, the following shall be inserted, namely:—

157A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Eight days.	The date of the decree or order.
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*The Provincial Small Cause Courts Bill, 1885.*

(Chapter V.—Supplemental Provisions. —Sections 35-36.—The First Schedule.—Enactments repealed.—The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

and (2 in No. 173, the words, figures and letter "No. 157A and" shall be inserted before the word and figures "No. 162."

[Act XVI,  
1884, s. 60.]

35. All powers conferred by this Act may be Powers exercisable from time to time as occasion requires.

[Act XVI,  
1885, s. 27.]

36. All orders required by this Act to be made Publication of certain in writing by the Local Government shall be published in the official Gazette, but shall take effect from the date on which they are made.

## THE FIRST SCHEDULE.

## ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
Act XI of 1856.	Muzfussil Small Cause Courts Act.	So much as has not been repealed.
Act VI of 1871.	Bengal Civil Courts Act.	Section 80.
Act III of 1873.	Madras Civil Courts Act.	Section 29, paragraph one.
Act XIV of 1882.	The Code of Civil Procedure.	(a) In the second schedule, in the particulars specified against Chapter XLIX, the words and figures "sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive)," and (b) so much of that schedule as extends to Provincial Courts of Small Causes sections 121 to 136 and such portions of sections 137, 447, 453, 454 and 455 as require applications to be supported by affidavit.

## THE SECOND SCHEDULE.

## SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

- (1) a suit concerning an act or order purporting to be done or made by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or the Local Government;
- (2) a suit concerning an act or order purporting to be done or made by a Court or by a judicial officer acting in the execution of his office, or concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting as aforesaid;

- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a local authority or Court of Wards, or by an officer or servant of a local authority or Court of Wards in the execution of his office or in the course of his service;

- (4) a suit for the possession of immoveable property;

- (5) a suit for the partition of immoveable property;

- (6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;

- (7) a suit for the recovery of, or otherwise concerning, the rent of land used for agricultural purposes, or for the assessment, enhancement, abatement or apportionment of the rent of any immoveable property;

- (8) a suit concerning the liability of land to be assessed to land-revenue;

- (9) a suit to restrain waste;

- (10) a suit for the determination of any other right to or interest in immoveable property;

- (11) a suit for the enforcement of a lien on moveable property, or by a pawnee for the redemption or recovery of a pledge;

- (12) a suit for the specific performance or rescission of a contract;

- (13) a suit for the rectification or cancellation of an instrument;

- (14) a suit to obtain an injunction;

- (15) a suit to enforce a trust;

- (16) a suit for a declaratory decree;

- (17) a suit to set aside a sale under a decree or order of a Court or of a revenue-authority, or a sale by a guardian;

[Act I,  
1877,  
Art. 138.]

[Act I,  
1877,  
Art. 138,  
47, 138,  
136, 137,  
130, 131,  
142, 143,  
and 144.]

[Act I,  
1877,  
Art. 138.]

[Act I,  
1877,  
Art. 138,  
130, 131,  
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[Act I,  
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Art. 138.]

[Act I,  
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Art. 138.]

[Act I,  
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[Act I,  
1877,  
Art. 138.]

[Act I,  
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and 144.]

[Act I,  
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Art. 138.]

[Act I,  
1877,  
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and 144.]

[Act I,  
1877,  
Art. 138,  
130, 131,  
136, 137,  
130, 131,  
142, 143,  
and 144.]

*The Provincial Small Cause Courts Bill, 1885.**(Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)*

- (18) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial or quasi-judicial capacity;
- (19) a suit to contest an award of a revenue-authority under any enactment for the time being in force;
- (20) a suit by a person against whom an order is passed under section 280, section 281 or section 282 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order;
- (21) a suit under the Indian Succession Act, 1885, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;
- (22) a suit for a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate;
- (23) a suit for the possession of an hereditary office;
- (24) a suit—  
 (a) for a dissolution of partnership;  
 (b) for an account of partnership-transactions; or  
 (c) for a balance of partnership-account unless the balance has been struck by the parties or their agents;
- (25) a suit for an account of property and its due administration under the decree of a Civil Court;
- (26) any other suit for an account;
- (27) a suit for a general average loss or for salvage;
- (28) a suit for compensation in respect of a collision on the high seas;
- (29) a suit on a policy of insurance;
- (30) a suit for compensation—  
 (a) for false imprisonment;  
 (b) for malicious prosecution;  
 (c) for libel;  
 (d) for slander;
- (e) for adultery or seduction;
- (f) for breach of promise of marriage;
- (g) for inducing a person to break a contract made with the plaintiff;
- (h) for illegal, irregular or excessive distresses; or
- (i) for injury caused by an injunction wrongfully obtained;
- (31) a suit for the restitution of conjugal rights, for the recovery of a wife, or for a divorce; [Act XV, 1877, Sch. II, Arts. 34 and 35.]
- (32) a suit for maintenance; [Act XV, 1877, Sch. II, Art. 128.]
- (33) a suit to enforce payment of the allowance or fees respectively called *malikdān* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property; [Act XV, 1877, Sch. II, Art. 132.]
- (34) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or transferee;
- (35) a suit for profits payable by the representative of a village-community or by his heir or transferee after payment of land-revenue, village-expenses and other sums;
- (36) a suit for contribution by a sharer in a joint estate in respect of a payment made by him of money due from a co-sharer, or by the manager of a joint estate of an undivided family in respect of a payment made by him on account of the estate; [Act XV, 1877, Sch. II, Arts. 99 and 107.]
- (37) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue; [Act XV, 1877, Sch. II, Art. 18.]
- (38) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

## STATEMENT OF OBJECTS AND REASONS.

THE suits cognizable in Courts of Small Causes are, subject to certain provisos, described in section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise"; and section 556 of the Code of Civil Procedure provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees." Since section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a Court of Small Causes, and, consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on section 6, of which some are due to the progress of legislation during the last twenty years (I. L. R. 3 All. 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow sections 18 and 19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those Courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of section 6, Act XI of 1865; and, as several sections and parts of sections of that Act have, from time to time, been repealed and other sections are obsolete as regards both expression and utility, it has been considered desirable to repeal the Act and re-enact the substance of the extant portions of it.

2. The parts of the Bill which appear to call for remark will be noticed in the following paragraphs.

3. *Section 3.*—The limited extent of the savings in this section, as compared with section 12 of the Act of 1865, is due to the Government of India having decided to move the legislature to repeal Act XI of 1841, and connected Acts, regarding Military Courts of Requests for Native Officers and Soldiers, and so much of Bombay Regulation XXII of 1827 as relates to the trial of small suits by superintendents of lazars in military stations in the presidency of Bombay.

4. *Section 8.*—Inconvenience has resulted from the restrictive terms in which section 15 of the Act of 1865 was drawn. It is proposed, therefore, to empower Local Governments to appoint Additional Judges without limit of time.

5. *Section 9.*—Sections 29 and 30, Act XI of 1865, appear to be little, if at all, used. It seems unnecessary, therefore, to retain them. If it is deemed desirable that two Judges should anywhere sit together as a bench for the trial of particular suits or classes of suits, a bench can be constituted under section 9 of the Bill, corresponding with section 31 of the Act of 1865.

6. *Section 17.*—This section declares the jurisdiction of a Court of Small Causes to extend to all suits, subject to certain exceptions specified in the second schedule to the Bill.

7. *Second Schedule.*—This schedule follows, with slight modifications section 19 of the Presidency Small Cause Courts Act, 1882, so far as that section goes.

8. As regards No. (11) of the suits specified in the schedule, it has been held that suits for the redemption of a mortgage of moveable property (16 W. R. 58) or for the sale of moveable property by enforcement of lien (9 W. R. 136) do not now, and (I. L. R. 7 All. 555) ought not to, lie in a Court of Small Causes.

9. The suits referred to in No. (20) are of two descriptions—

- (a) by a decree-holder to have the right of his judgment-debtor declared to property of which the attachment has been raised; and
- (b) by the owner of attached property, after disallowance of his objection to the attachment, either against the decree-holder or an auction-purchaser, to recover the property.

Suits of description (a), being suits for declaratory decrees, appear to have been held by most, if not all, High Courts not to be cognizable by a Court of Small Causes (19 W. R. 141; I. L. R. 4 Bom. 503; 3 All. H. C. Rep. 156; Punjab Record, No. 84 of 1870). As to suits of description (b), there is a conflict of authority (I. L. R. 7 All. 152, and cases there cited). It would seem, apart from section 6 of Act XI of 1865, that if suits of the one description

ought not to be cognizable by Courts of Small Causes, the jurisdiction of those Courts ought to be barred in respect of suits of the other description also.

10. The suits referred to in No. (30) are of superior importance, and there should be a right of appeal from decrees passed in them. The rulings at I. L. R. 3 All. 747, and in the cases there cited, were made solely with reference to the language of section 6 of the Act of 1865. Most of these suits have been excluded from the jurisdiction of Presidency Small Cause Courts.

11. As regards the suits which No. (32) is intended to exclude from the jurisdiction of Courts of Small Causes, Westropp, C. J., has observed that "the very possible necessity of varying the maintenance from time to time, and of enquiring into the circumstances of the claimant, or of the family estate, or the family itself, shows how unsuitable maintenance suits are for the Small Cause Courts" (I. L. R. 2 Bom. 630). Arrears of maintenance are usually claimed on one of four grounds—

- (a) the legal right of the plaintiff to maintenance;
- (b) a decree of Court;
- (c) an award of arbitrators fixing the maintenance; or
- (d) a special bond or other contract for the payment of maintenance.

Suits on ground (a) involve intricate questions of title, and those on grounds (b) and (c) have been held not to be cognizable by a Court of Small Causes (6 All. H. C. Rep. 91, and cases there cited; 3 All. H. C. Rep. 117 and 7 All. H. C. Rep. 329). Suits on ground (d) are at present cognizable by a Court of Small Causes. But, seeing that even in those suits questions may be raised as to re-adjustment of maintenance (5 C. L. R. 18), and possibly as to forfeiture (I. L. R. 7 Bom. 84), it seems desirable that suits for maintenance generally, including suits of the kind referred to at I. L. R. 7 Bom. 537, should be excluded from the jurisdiction of Courts of Small Causes.

12. As regards No. (33), reference may be made to 5 All. H. C. Rep. 205, and I. L. R. 1 All. 444, 2 All. 905, and 9 Cal. 183. Moreover, in suits which No. (33) is intended to cover, claims may be, and often are, included which ought not to be cognizable by a Court of Small Causes.

13. As regards Nos. (34) and (35), reference may be made to the case reported at I. L. R. 5 All. 438. It seems proper that such a suit as is there described, involving, as it may, intricate village-accounts and important questions of right, should not be cognizable by a Court of Small Causes. Moreover, the decree in the suit should be open to appeal, as ordinarily the decree of a Revenue Court would be in a suit by a recorded co-sharer against a lambardar.

14. There appears to be no sufficient reason for excluding any suits for contribution from the jurisdiction of Courts of Small Causes, except the suits referred to in Nos. (36) and (38). As to the cognizance of suits for contribution generally under the Act of 1865, there has been some conflict of authority, the High Court at Fort William holding them not to be cognizable by Courts of Small Causes (B. L. R., F. B., 675, and I. L. R. 10 Cal. 528), and the High Courts at Madras and Allahabad holding them to be cognizable by those Courts (5 Mad. 11. C. Rep. 200, and I. L. R. 3 All. 66).

There would seem, apart from section 6 of Act XI of 1865, to be no sufficient ground for excluding from the cognizance of a Court of Small Causes such a suit as that reported at I. L. R. 7 All. 378.

15. No. (39) will exclude the following among other suits:—

- (a) suits for compensation for infringing copyright (I. L. R. 6 Cal. 499);
- (b) suits for compensation for infringing the exclusive privilege of an inventor (Act XV, 1859, section 22);
- (c) suits against Sovereign Princes or Ruling Chiefs, or Ambassadors or Envoys of Foreign States (Act XIV, 1882, section 483);
- (d) suits for dissolution of marriage or judicial separation (Act IV, 1869); and
- (e) suits founded on the liability of a contributory (Act VI, 1882, section 125).

16. Sections 19 and 34.—As to the second proviso to section 21 of the Act of 1865, reference may be made to I. L. R. 6 Cal. 238 and 9 Cal. 287. As the law now stands, a person wishing to have a decree set aside may apply for (a) a new trial under section 21, Act XI of 1865, or (b) a review under Chapter XLVII of the Code; or (c) both a new trial and a review. "It is difficult," as observed by the learned Chief Justice of the High Court at Fort William, "to conceive any reasons which would justify a new trial which would not also afford good grounds for a review" (I. L. R. 6 Cal. 238). It is proposed, therefore, to replace the alternative or cumulative remedies of new trial and review by the single remedy of review, but to impose on applications for review restrictions similar to those imposed by the existing law on applications for new trial.

17. Section 21.—This section supplements section 223 of the Code of Civil Procedure, which extends to Courts of Small Causes. Section 20 of the Act of 1865, which the section

supersedes, appears in some places to have been construed to require a decree-holder to proceed in the first instance against moveable property even when the moveable property of the judgment-debtor is known to be of no appreciable value.

18. *Section 26.*—Under section 45 of the Act of 1865, it is the duty of the Clerk of the Court to "take charge of and keep an account of all moneys payable or paid into or out of Court" and to "enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose." The terms of that section have been held to preclude the transfer of the duty of receiving moneys and keeping accounts in a Court of Small Causes to the special staff of accountants which in some provinces is employed at the head-quarters of each district to receive and account for moneys paid into the Civil Courts located there. It has been provided in section 26 of the Bill that the High Court may, if it sees fit, relieve the clerk of the Court of his duties as cashier and accountant.

19. *Section 32.*—The High Court for the North-Western Provinces has held (5 All. H. C. Rep. 55) that section 51 of the Act of 1865 does not authorise the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sadr Amin, and that the section only contemplates an occasional investment of the powers, and one contingent on the state of the business of the Court. Under section 32 of the Bill the question will not again arise.

20. In sections 32 and 33 regard has been had to I. L. R. 8 Bom. 230, 9 Bom. 237, 1 All. 57, 1 All. 624, and 3 All. 719. It has been made clear that, for the purposes of sections 223 and 295 of the Code of Civil Procedure and section 21 of the Bill, the Court of a Judge of a Court of Small Causes when the Judge is acting as such, and the Court of the same Judge when the Judge has been appointed to be and is acting as a Subordinate Judge, are different Courts, and that, for the same purposes, the Court of a Subordinate Judge when the Judge is acting as such, and the Court of the same Judge when the Judge has been invested with the jurisdiction of a Court of Small Causes and is exercising that jurisdiction, are different Courts.

21. The first proviso to section 21 of Act XI of 1865 has been omitted because its retention has been rendered unnecessary by the extension of section 108 of the Code of Civil Procedure to Courts of Small Causes.

22. Section 52 of the Act of 1865 has been omitted, as it is believed not to be used.

23. It is proposed by the first schedule to make section 648 of the Code of Civil Procedure, which extends to the Presidency Small Cause Courts, extend also to Provincial Courts of Small Causes.

24. It is proposed by the same schedule to repeal so much of the second schedule of the Code of Civil Procedure as extends sections 121 to 136 of the Code to Provincial Courts of Small Causes. These sections do not extend to Presidency Small Cause Courts, and their provisions, which contemplate elaborate and lengthened trials in suits of superior importance, are incompatible with the speedy disposal of the petty suits cognizable by a Court of Small Causes. The want of the sections is not likely to be really felt in Courts of Small Causes, while their application to those Courts is not unlikely to be taken advantage of for the purpose of delaying proceedings.

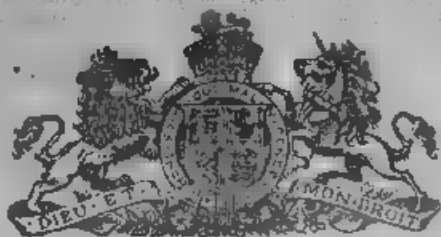
25. So much of sections 137, 447, 453, 454 and 456 of the Code of Civil Procedure as requires applications to Courts of Small Causes to be supported by affidavit is proposed to be repealed. Chapter XVI of the Code, respecting affidavits, does not extend to Provincial Courts of Small Causes.

C. P. ILBERT.

*The 18th December, 1885.*

S. HARVEY JAMES,

*Offg. Secretary to the Government of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 26, 1885.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th December 1885:—

No. 19 OF 1885.

### THE PROVINCIAL SMALL CAUSE COURTS BILL, 1885.

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33. Application of Act to Courts with jurisdiction of Court of Small Causes.
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##### FIRST SCHEDULE.—ENACTMENTS REPEALED.

##### SECOND SCHEDULE.—SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

*The Provincial Small Cause Courts Bill, 1885.*

*(Chapter II.—Constitution of Courts of Small Causes.—Sections 1-8.)*

*A Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows:—

**CHAPTER I.**

**PRELIMINARY.**

1. (1) This Act may be called the Provincial Short title, local ex- Small Cause Courts Act, tent and commencement. 1886.

(2) It extends to the whole of British India except the scheduled districts as defined in the Scheduled Districts Act, 1874; and

(3) It shall come into force on the first day of July, 1886.

2. (1) The enactments specified in the first schedule to this Act are repealed to the extent mentioned therein.

(2) But all Courts constituted, limits fixed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act XI of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall, so far as may be, be deemed to have been respectively constituted, fixed, made, conferred, prescribed, given and published under this Act.

(3) Any enactment or document referring to the said Act XI of 1865 shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Saving of procedure and jurisdiction in certain cases.

3. Nothing in this Act affects—

(a) any proceedings prior to decree in any suit instituted before the day on which this Act comes into force or any proceedings after decree which were commenced before and were pending on that day;

(b) the provisions of the Army Act, 1881, section 151; or

(c) the jurisdiction of a Cantonment Joint Magistrate invested with civil jurisdiction under Act III of 1859, or of a Magistrate

having jurisdiction under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) "Court of Small Causes" means a Court of Small Causes constituted under this Act; •

(2) "District Court" means a principal Civil Court of original jurisdiction;

(3) "district" means the local limits of the jurisdiction of a District Court;

(4) "value", used with reference to a suit, means the amount or value of the subject-matter of the suit; and

(5) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

**CHAPTER II.**

**CONSTITUTION OF COURTS OF SMALL CAUSES.**

5. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration.

(2) The local limits of the jurisdiction of the Court shall be such as the Local Government may define.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

7. (1) A Judge who is the Judge of two or more such Courts may fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court directs.

8. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes.

(2) The Additional Judge shall discharge such of the functions of the Judge as the Judge directs.

XIV of 1874.

[Act XIV, 1882, s. 3.]

[44 & 45 Vic., c. 58.]  
[Act XV, 1882, s. 1, and Act XI, 1865, s. 40.]  
[Act XI, 1865, s. 12, of Act IX, 1860.]

[Act II, 1865, s. 1.]

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[Act II, 1865, s. 1.]

[Act II, 1865, s. 1.]

[Act II, 1865, s. 1.]

*The Provincial Small Cause Courts Bill, 1885.**(Chapter II.—Constitution of Courts of Small Causes.—Sections 9-16.)*

XIV. 1885. 9. The Judge may withdraw from the Additional Judge any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

1885. 9. The Local Government may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such suits cognizable by a Court of Small Causes as may be described in the order.

1885. 10. (1) Where two Judges, or a Judge and an Additional Judge, sitting together under section 9, are of the same opinion as to a decree or order to be made, the decree or order shall follow their opinion.

(2) If they differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of the Code of Civil Procedure applicable to a reference to the High Court shall apply.

(3) If they differ on any matter other than a matter specified in sub-section (2), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

11. (4) For the purposes of sub-section (3), a Judge permanently appointed shall be deemed senior to an officiating Judge.

1885. 11. (1) The Judge of a Court of Small Causes shall, if the Local Government directs, appoint an officer to be called the Registrar.

(2) The appointment shall be subject to the sanction of the Local Government.

(3) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(4) The Local Government may, by order in writing, confer upon the Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(5) The Registrar shall exercise the jurisdiction subject to the general control of the Judge.

1885. 12. (1) Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint an officer to be called the Clerk of the Court.

(2) A Registrar of a Court of Small Causes may also be the Clerk of the Court.

13. Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint as many other ministerial officers as may be necessary.

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed.

15. (1) A Judge, Additional Judge or Registrar of a Court of Small Causes may be suspended or removed from office by the Local Government.

(2) The Judge of a Court of Small Causes may suspend the Registrar of his Court if there appears to him to be urgent necessity for so doing, and may suspend or remove from office, or fine in an amount not exceeding one month's salary, any other ministerial officer of his Court who is guilty of misconduct or neglect in the performance of his duties.

(3) A fine imposed under sub-section (2) may, if the order imposing it so directs, be recovered by deduction of the amount thereof from any salary which may be or become due to the officer fined.

16. (1) A Judge, Additional Judge or ministerial officer appointed under this Act shall not, during his tenure of office, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, vakil, attorney, pleader or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

(2) If a Judge, Additional Judge or ministerial officer aforesaid practises, acts or is concerned in any trade or profession, in contravention of the provisions of sub-section (1), he shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

(3) Nothing in this section shall be deemed to prohibit a Judge, Additional Judge or ministerial officer from being a member of an incorporated or registered company.

*The Provincial Small Cause Courts Bill, 1885.**(Chapter IV.—Practice and Procedure of Courts of Small Causes.—Sections 17-24.)*

## CHAPTER III.

## JURISDICTION OF COURTS OF SMALL CAUSES.

17. (1) A Court of Small Causes shall not take

Cognizance of suits by  
Courts of Small Causes.

cognizance of the suits specified in the second schedule to this Act.

[Act XV,  
1882, ss. 18  
and 19.]

(2) Subject to the exceptions specified in the said schedule, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

[Act XI,  
1885, s. 7.]

(3) Subject to the exceptions aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

[Act XI, 1885,  
s. 12.  
Act XVII,  
1878, s. 6.]

18. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes.

## CHAPTER IV.

## PRACTICE AND PROCEDURE OF COURTS OF SMALL CAUSES.

[Act XIV,  
1882, s. 3.]  
XIV of  
1882.

19. The procedure prescribed in the chapters Application of the and sections of the Code of Civil Procedure, Civil Procedure specified in the second schedule annexed to the said Code, as amended by this Act, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it.

Provided that—

[Act XI,  
1885, s. 21.]

(a) where the applicant for a review of judgment was the defendant or one of the defendants, the Court shall not grant his application unless, at the time of presenting the application, he deposits in the Court the amount due from him under the decree or order; and

(b) where a person to be arrested or property to be attached under section 648 of the said Code resides or is situate within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as

[Act XIV,  
1882,  
ss. 56 and  
57.]

the case may be; and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

20. Except in a case of set-off, a written statement shall not be received unless required by the Court.

21. If it appears to a Court of Small Causes that a judgment-debtor under its decree has not, within the local limits of the jurisdiction of the Court, moveable property sufficient to satisfy the decree, it may, on the application of the decreeholder, send the decree for execution to another Court in the manner provided by the Code of Civil Procedure, sections 223 and 224.

22. Suits cognizable by the Registrar under section 11, sub-section (4), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

Provided that the Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

23. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may return or reject a plaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him.

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, his application shall be made at the first sitting of the Court after the day on which the Registrar admitted, or returned or rejected, the plaint.

24. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment and re-hear the suit, on the same conditions, on the

*The Provincial Small Cause Courts Bill, 1885.**(Chapter V.—Supplemental Provisions.—Sections 25-34.)*

same grounds and in the same manner as if the decree had been passed by himself.

- 29.] 25. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar shall receive applications for the execution of decrees and orders made by the Court of which he is Registrar or sent to that Court for execution, and may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of the applications which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), and the Additional Judge, in the case of any such decree or order made by himself, may, within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order, either of his own motion or on the application of a party.

- VIII, 35.] (3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877.

26. The Clerk of the Court shall, subject to the orders of the Judge, and of the Registrar if a Registrar has been appointed, receive plaints and applications, issue summonses and notices, and, unless the High Court has ordered otherwise, take charge and keep an account of all moneys and securities for money paid or delivered into or out of Court.

- 21.] 27. Save as in this Act expressly provided, a decree or order made under the foregoing provisions of this Act shall be final.

## CHAPTER V.

## SUPPLEMENTAL PROVISIONS.

- VIII, 35.] 28. The Local Government may fix the place or places, within the local limits of the jurisdiction of a Court of Small Causes, at which the jurisdiction shall be exercised.

29. A Court of Small Causes shall be subject to the control of the District Court and to the superintendence of the High Court, and shall—

- (a) keep such registers, books and accounts as the High Court prescribes; and  
(b) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for re-

cords, returns and statements in such form and manner as the authority making the requisition directs.

30. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

- Abolition of Courts of Small Causes. 31. The Local Government may, by order in writing, abolish a Court of Small Causes.

32. (1) Nothing in this Act shall prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court subordinate to a District Court, or to be a Magistrate of any class.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to such rules as the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of his duties as the Judge of the other Civil Court or as a Magistrate.

33. (1) So much of Chapters III and IV of this Act as relates to the nature of the suits cognizable by Courts of Small Causes, to the exclusion of the jurisdiction of other Courts in those suits, to the powers and procedure of Courts of Small Causes, and to the finality of the decrees and orders of those Courts, applies to Courts invested under any enactment for the time being in force with the jurisdiction of a Court of Small Causes when the Courts are exercising that jurisdiction.

(2) A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

34. In the third division of the second schedule to the Indian Limitation Act, 1877,—  
(a) before No. 158, the following shall be inserted, namely:—

"157A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Eight days.	The date of the decree or order."
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*The Provincial Small Cause Courts Bill, 1885.*

(Chapter V.—Supplemental Provisions.—Sections 35-36.—The First Schedule.—Enactments repealed.—The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

and (b) in No. 178, the words, figures and letter "No. 157A and" shall be inserted before the word and figures "No. 162."

[Act XVIII,  
1884, s. 65.]

35. All powers conferred by this Act may be Powers exercisable from time to time as occasion requires.

[Act XVI,  
1886, s. 27.]

36. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette, but shall take effect from the date on which they are made.

## THE FIRST SCHEDULE.

## ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
Act XI of 1866.	Mofassil Small Cause Courts Act.	So much as has not been repealed.
Act VI of 1871.	Bengal Civil Courts Act.	Section 30.
Act III of 1878.	Madras Civil Courts Act.	Section 28, paragraph one.
Act XIV of 1882.	The Code of Civil Procedure.	(a) In the second schedule, in the particulars specified against Chapter XLIX, the words and figures "sections 640 to 647 (both inclusive), sections 648 to 652 (both inclusive)," and (b) so much of that schedule as extends to Provincial Courts of Small Causes sections 121 to 136 and such portions of sections 137, 447, 448, 449 and 456 as require applications to be supported by affidavit.

## THE SECOND SCHEDULE.

## SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

- (1) a suit concerning an act or order purporting to be done or made by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or the Local Government;
- (2) a suit concerning an act or order purporting to be done or made by a Court or by a judicial officer acting in the execution of his office, or concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting as aforesaid;

- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a local authority or Court of Wards, or by an officer or servant of a local authority or Court of Wards in the execution of his office or in the course of his service;

- (4) a suit for the possession of immovable property;

- (5) a suit for the partition of immovable property;

- (6) a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immovable property for the redemption of the mortgage;

- (7) a suit for the recovery of, or otherwise concerning, the rent of land used for agricultural purposes, or for the assessment, enhancement, abatement or apportionment of the rent of any immovable property;

- (8) a suit concerning the liability of land to be assessed to land-revenue;

- (9) a suit to restrain waste;

- (10) a suit for the determination of any other right to or interest in immovable property;

- (11) a suit for the enforcement of a lien on moveable property, or by a pawnor for the redemption or recovery of a pledge;

- (12) a suit for the specific performance or registration of a contract;

- (13) a suit for the rectification or cancellation of an instrument;

- (14) a suit to obtain an injunction;

- (15) a suit to enforce a trust;

- (16) a suit for a declaratory decree;

- (17) a suit to set aside a sale under a decree or order of a Court or of a revenue-authority, or a sale by a guardian;

[Act XV,  
1877, Sec.  
148.]

[Act XV,  
1877, Sec.  
148, s. 20,  
47, 134,  
135, 137,  
139, 140,  
142, 143,  
and 148.]

[Act XV,  
1877, Sec.  
148.]

[Act XV,  
1877, Sec.  
148, s. 20,  
47, 134,  
135, 137,  
139, 140,  
142, 143,  
and 148.]

[Act IV,  
1877, Sec.  
148.]

[Act XV,  
1877, Sec.  
148.]

[Act XV,  
1877, Sec.  
148, s. 20,  
47, 134,  
135, 137,  
139, 140,  
142, 143,  
and 148.]

[Act XV,  
1877, Sec.  
148.]

[Act I, 18  
Chaps. III  
IV; and s.  
XV, 1877,  
Sec. II, s.  
113 and 114.]

[Act I, 18  
Chaps. III  
and V; and  
Act XV, 1877,  
Sec. II, s.  
91.]

[Act I, 1877,  
Chapt. I.]

[Act XV,  
1877, Sec.  
148, s. 20,  
47, 134,  
135, 137,  
139, 140,  
142, 143,  
and 148.]

[Act XV,  
1877, Sec.  
148, s. 20,  
47, 134,  
135, 137,  
139, 140,  
142, 143,  
and 148.]

*The Provincial Small Cause Courts Bill, 1885.**(Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)*

- XV, Sch. II, 18 and 19. (18) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial or quasi-judicial capacity ;
- XV, Sch. II, 1 and 2. (19) a suit to contest an award of a revenue-authority under any enactment for the time being in force ;
- XV, Sch. II, 1. (20) a suit by a person against whom an order is passed under section 280, section 281 or section 282 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order ;
- XV, Sch. II, 1885-1881. (21) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ;
- XV, Sch. II, 28, and I, 1865, proviso. (22) a suit for a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate ;
- XV, Sch. II, 4. (23) a suit for the possession of an hereditary office ;
- XV, Sch. II, 6, and I, 1865, proviso. (24) a suit—  
 (a) for a dissolution of partnership ;  
 (b) for an account of partnership-transactions ; or  
 (c) for a balance of partnership-account unless the balance has been struck by the parties or their agents ;
- XV, 213. (25) a suit for an account of property and its due administration under the decree of a Civil Court ;
- XV, Sch. II, 1. (26) any other suit for an account ;
- XV, Sch. II, 1. (27) a suit for a general average loss or for salvage ;
- XV, Sch. II, 1. (28) a suit for compensation in respect of a collision on the high seas ;
- XV, Sch. II, 1 and 2. (29) a suit on a policy of insurance ;
- XV, Sch. II, 23, 26, 27, 28 and 29. (30) a suit for compensation—  
 (a) for false imprisonment ;  
 (b) for malicious prosecution ;  
 (c) for libel ;  
 (d) for slander ;
- (e) for adultery or seduction ;
- (f) for breach of promise of marriage ;
- (g) for inducing a person to break a contract made with the plaintiff ;
- (h) for illegal, irregular or excessive distress ; or
- (i) for injury caused by an injunction wrongfully obtained ;
- (31) a suit for the restitution of conjugal rights, for the recovery of a wife, or for a divorce ; [Act XV, 1877, Sch. II, Arts. 34 and 35.]
- (32) a suit for maintenance ; [Act XV, 1877, Sch. II, Art. 123.]
- (33) a suit to enforce payment of the allowance or fees respectively called *mullikāna* and *kakht*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property ; [Act XV, 1877, Sch. II, Art. 182.]
- (34) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or transferee ;
- (35) a suit for profits payable by the representative of a village-community or by his heir or transferee after payment of land-revenue, village-expenses and other sums ;
- (36) a suit for contribution by a sharer in a joint estate in respect of a payment made by him of money due from a co-sharer, or by the manager of a joint estate of an undivided family in respect of a payment made by him on account of the estate ; [Act XV, 1877, Sch. II, Arts. 99 and 107.]
- (37) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue ; [Act XV, 1877, Sch. II, Art. 10.]
- (38) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

## STATEMENT OF OBJECTS AND REASONS.

THE suits cognizable in Courts of Small Causes are, subject to certain provisos, described in section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise"; and section 586 of the Code of Civil Procedure provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees." Since section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a Court of Small Causes; and, consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on section 6, of which some are due to the progress of legislation during the last twenty years (I. L. R. 9 All. 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow sections 18 and 19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those Courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of section 6, Act XI of 1865; and, as several sections and parts of sections of that Act have, from time to time, been repealed and other sections are obsolete as regards both expression and utility, it has been considered desirable to repeal the Act and re-enact the substance of the extant portions of it.

2. The parts of the Bill which appear to call for remark will be noticed in the following paragraphs.

3. *Section 3.*—The limited extent of the savings in this section, as compared with section 12 of the Act of 1865, is due to the Government of India having decided to move the legislature to repeal Act XI of 1865, and connected Acts, regarding Military Courts of Requests for Native Officers and Soldiers, and so much of Bombay Regulation XXII of 1827 as relates to the trial of small suits by superintendents of bázars in military stations in the presidency of Bombay.

4. *Section 8.*—Inconvenience has resulted from the restrictive terms in which section 15 of the Act of 1865 was drawn. It is proposed, therefore, to empower Local Governments to appoint Additional Judges without limit of time.

5. *Section 9.*—Sections 29 and 30, Act XI of 1865, appear to be little, if at all, used. It seems unnecessary, therefore, to retain them. If it is deemed desirable that two Judges should anywhere sit together as a bench for the trial of particular suits or classes of suits, a bench can be constituted under section 9 of the Bill, corresponding with section 31 of the Act of 1865.

6. *Section 17.*—This section declares the jurisdiction of a Court of Small Causes to extend to all suits, subject to certain exceptions specified in the second schedule to the Bill.

7. *Second Schedule.*—This schedule follows, with slight modifications section 19 of the Presidency Small Cause Courts Act, 1882, so far as that section goes.

8. As regards No. (11) of the suits specified in the schedule, it has been held that suits for the redemption of a mortgage of moveable property (16 W. R. 58) or for the sale of moveable property by enforcement of lien (9 W. R. 136) do not now, and (I. L. R. 7 All. 555) ought not to, lie in a Court of Small Causes.

9. The suits referred to in No. (20) are of two descriptions—

- (a) by a decree-holder to have the right of his judgment-debtor declared to property of which the attachment has been raised; and
- (b) by the owner of attached property, after disallowance of his objection to the attachment, either against the decree-holder or an auction-purchaser, to recover the property.

Suits of description (a), being suits for declaratory decrees, appear to have been held by most, if not all, High Courts not to be cognizable by a Court of Small Causes (10 W. R. 141; I. L. R. 4 Bom. 503; 3 All. H. C. Rep. 156; Punjab Record, No. 84 of 1870). As to suits of description (b), there is a conflict of authority (I. L. R. 7 All. 152, and cases there cited). It would seem, apart from section 6 of Act XI of 1865, that if suits of the one description

ought not to be cognizable by Courts of Small Causes, the jurisdiction of those Courts ought to be barred in respect of suits of the other description also.

10. The suits referred to in No. (30) are of superior importance, and there should be a right of appeal from decrees passed in them. The rulings at I. L. R. 3 All. 747, and in the cases there cited, were made solely with reference to the language of section 6 of the Act of 1865. Most of these suits have been excluded from the jurisdiction of Presidency Small Cause Courts.

11. As regards the suits which No. (32) is intended to exclude from the jurisdiction of Courts of Small Causes, Westropp, C. J., has observed that "the very possible necessity of varying the maintenance from time to time, and of enquiring into the circumstances of the claimant, or of the family estate, or the family itself, shows how unsuitable maintenance suits are for the Small Cause Courts" (I. L. R. 2 Bom. 630). Arrears of maintenance are usually claimed on one of four grounds—

- (a) the legal right of the plaintiff to maintenance;
- (b) a decree of Court;
- (c) an award of arbitrators fixing the maintenance; or
- (d) a special bond or other contract for the payment of maintenance.

Suits on ground (a) involve intricate questions of title, and those on grounds (b) and (c) have been held not to be cognizable by a Court of Small Causes (6 All. H. C. Rep. 91, and cases there cited; 3 All. H. C. Rep. 117 and 7 All. H. C. Rep. 329). Suits on ground (d) are at present cognizable by a Court of Small Causes. But, seeing that even in those suits questions may be raised as to re-adjustment of maintenance (5 C. L. R. 18), and possibly as to forfeiture (I. L. R. 7 Bom. 84), it seems desirable that suits for maintenance generally, including suits of the kind referred to at I. L. R. 7 Bom. 537, should be excluded from the jurisdiction of Courts of Small Causes.

12. As regards No. (33), reference may be made to 1 All. H. C. Rep. 205, and I. L. R. 1 All. 444, 3 All. 905, and 9 Cal. 183. Moreover, in suits which No. (33) is intended to cover, claim may be, and often are, included which ought not to be cognizable by a Court of Small Causes.

13. As regards Nos. (34) and (35), reference may be made to the case reported at I. L. R. 5 All. 438. It seems proper that such a suit as is there described, involving, as it may, intricate village-account and important questions of right, should not be cognizable by a Court of Small Causes. Moreover, the decree in the suit should be open to appeal, as ordinarily the decree of a Revenue Court would be in a suit by a recorded co-sharer against a lambardar.

14. There appears to be no sufficient reason for excluding any suits for contribution from the jurisdiction of Courts of Small Causes, except the suits referred to in Nos. (36) and (38). As to the cognizance of suits for contribution generally under the Act of 1865, there has been some conflict of authority, the High Court at Fort William holding them not to be cognizable by Courts of Small Causes (B. L. R., F. B., 375, and I. L. R. 10 Cal. 388), and the High Court at Madras and Allahabad holding them to be cognizable by those Courts (5 Mad. H. C. 19, 200, and I. L. R. 5 All. 66).

There would seem, apart from section 6 of Act XI of 1865, to be no sufficient ground for excluding on the cognizance of a Court of Small Causes such a suit as that reported at I. L. R. 7 All. 3.

15. No. (3) will exclude the following among other suits:—

- (a) suit for compensation for infringing copyright (I. L. R. 6 Cal. 499);
- (b) suit for compensation for infringing the exclusive privilege of an inventor (Act XV, 1859, section 22);
- (c) suit against Sovereign Princes or Ruling Chiefs, or Ambassadors or Envoys of Foreign States (Act XLV, 1882, section 433);
- (d) suit for dissolution of marriage or judicial separation (Act IV, 1869); and
- (e) suit founded on the liability of a contributory (Act VI, 1882, section 125).

16. *Section 19 and 34.*—As to the second proviso to section 21 of the Act of 1865, reference may be made to I. L. R. 6 Cal. 236 and 8 Cal. 287. As the law now stands, a person wishing to have a decree aside may apply for (a) a new trial under section 21, Act XI of 1865, or (b) a review under Order XLVII of the Code, or (c) both a new trial and a review. "It is difficult," as observed by the learned Chief Justice of the High Court at Fort William, "to conceive any reasons which would justify a new trial which would not also afford good grounds for review" (I. L. R. 8 Cal. 238). It is proposed, therefore, to replace the alternative or cumulative remedies of new trial and review by the single remedy of review, but to impose on applications for review restrictions similar to those imposed by the existing law on applications for new trial.

17. *Section*—This section supplements section 223 of the Code of Civil Procedure, which extends to Courts of Small Causes. Section 20 of the Act of 1865, which the section

supersedes, appears in some places to have been construed to require a decree-holder to proceed in the first instance against moveable property even when the moveable property of the judgment-debtor is known to be of no appreciable value.

18. *Section 26.*—Under section 45 of the Act of 1865, it is the duty of the Clerk of the Court to “take charge of and keep an account of all moneys payable or paid into or out of Court” and to “enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose.” The terms of that section have been had to preclude the transfer of the duty of receiving moneys and keeping accounts in a Court of Small Causes to the special staff of accountants which in some provinces is employed at the head-quarters of each district to receive and account for moneys paid into the Civil Courts located there. It has been provided in section 26 of the Bill that the High Court may, if it sees fit, relieve the clerk of the Court of his duties as cashier and accountant.

19. *Section 52.*—The High Court for the North-Western Provinces has held (5 All. H. C. Rep. 55) that section 51 of the Act of 1865 does not authorise the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sadr Amin, and that the section only contemplates an occasional investment of the powers, and one contingent on the state of the business of the Court. Under section 51 of the Bill the question will not again arise.

20. In sections 32 and 33 regard has been had to I. L. R. 8 Bom. 280, 2 Bom. 237, 1 All. 87, 1 All. 624, and 3 All. 710. It has been made clear that, for the purposes of sections 223 and 225 of the Code of Civil Procedure and section 21 of the Bill, the Court of a Judge of a Court of Small Causes when the Judge is acting as such, and the Court of the same Judge when the Judge has been appointed to be and is acting as a Subordinate Judge, are different Courts, and that, for the same purposes, the Court of a Subordinate Judge when the Judge is acting as such, and the Court of the same Judge when the Judge has been invested with the jurisdiction of a Court of Small Causes and is exercising that jurisdiction, are different Courts.

21. The first proviso to section 21 of Act XI of 1865 has been omitted because its retention has been rendered unnecessary by the extension of section 108 of the Code of Civil Procedure to Courts of Small Causes.

22. Section 52 of the Act of 1865 has been omitted, as it is believed not to be used.

23. It is proposed by the first schedule to make section 648 of the Code of Civil Procedure, which extends to the Presidency Small Cause Courts, extend also to Provincial Courts of Small Causes.

24. It is proposed by the same schedule to repeal so much of the second schedule of the Code of Civil Procedure as extends sections 121 to 136 of the Code to Provincial Courts of Small Causes. These sections do not extend to Presidency Small Cause Courts, and their provisions, which contemplate elaborate and lengthened trial in suits of superior importance, are incompatible with the speedy disposal of the petty suits cognizable by a Court of Small Causes. The want of the sections is not likely to be really felt in Courts of Small Causes, while their application to those Courts is not unlikely to be taken advantage of for the purpose of delaying proceedings.

25. So much of sections 137, 447, 453, 454 and 456 of the Code of Civil Procedure as requires applications to Courts of Small Causes to be supported by affidavit is proposed to be repealed. Chapter XVI of the Code, respecting affidavits, does not extend to Provincial Courts of Small Causes.

C. F. (3) BERT.

The 18th December, 1885.

S. HARVEY MES,

Offg. Secretary to the Government of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 3rd December, 1885, and was referred to a Select Committee :—

No. 20 OF 1885.

*A Bill to amend Act XXXVI of 1858.*

WHEREAS it is expedient to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*) ; It is hereby enacted as follows :—

1. After section 18 of the said Act the following section shall be inserted, namely :—

“When an Executive Government has not established within its limits a public asylum for the reception and detention of lunatics under this Act, the Governor General in Council may, from time to time, appoint an asylum established in British India beyond those limits to be an asylum to which a Magistrate or Judge exercising jurisdiction within those limits may send lunatics

as to an asylum established under this Act for the division in which his jurisdiction is situate.”

## STATEMENT OF OBJECTS AND REASONS.

IN some of the smaller Provinces, such as Coorg and the Andaman and Nicobar Islands, the Local Governments have not established asylums under Act XXXVI of 1858 for the reception and detention of lunatics. Occasions have, however, arisen on which inconvenience has been experienced by reason of there not being asylums to which Magistrates exercising jurisdiction in those Provinces may send lunatics under the provisions of the Act. The object of this Bill is to enable the Governor General in Council to appoint asylums to which lunatics may be sent from those Provinces.

S. C. BAYLEY.

The 18th December, 1885.

S. HARVEY JAMES,

Offy. Secretary to the Government of India.